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OBSERVATIONS

On the Trial of

JAMES COIGLY,

For

HIGH-TREASON:

Together with an

ACCOUNT OF HIS DEATH,

Including his

ADDRESS TO THE SPECTATORS.

To which is added an

A P P E N D I X,

Containing an

INTERESTING CORRESPONDENCE,

Relative to the Trial,

*Between Mr. COIGLY's SOLICITOR and the
DUKE of PORTLAND, &c.*

And also

LETTERS

Written by Mr. COIGLY to the

ATTORNEY-GENERAL AND THE DUKE OF
PORTLAND:

And other Documents connected with the Trial.

BY JOHN FENWICK.

L O N D O N:

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ADVERTISEMENT.

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THE delays that have happened in the publication of this Pamphlet, have been very mortifying to the Editor. He knows how great has been the impatience of many persons for whom he has the deepest veneration to see the character of the trial of Mr. Coigly plainly unfolded to the public, but still more to see some letters written by that unfortunate man on the day preceding his death, and also the interesting correspondence between his solicitor and the Duke of Portland relative to an extraordinary circumstance in this trial. It is some consolation to him that little of the blame belongs to him. If an error which he committed in the beginning be excepted, he can safely say that he acquits himself entirely of it.

Since the first half-sheet of these Observations was worked off, he finds that he made a statement in it which is not correct. Having shewn the danger there was of a partiality existing in the PANNEL beyond that which was betrayed by the conduct of the Rev. Mr. Arthur Young and others, he says in page 7, "But when these instances were before him, what had he a right to say? It was his privilege, and I will add his duty, to say, 'I cannot justly be tried by a jury taken from a pannel which is impeached and tainted, as a whole, by these partial and almost miraculous detections.'" The prisoner, he is told, had not a legal right to challenge the array (which means the whole pannel) for partiality in
members

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members of it; he must shew cause for impeaching the whole, such as partiality in the sberiff, to challenge the array. But his argument is not affected by this mistake, if he has shewn, which he thinks he has, that there was a serious danger of secret partialities existing in the pannel, beside those which were detected.

He would have been very glad to have concluded these Observations with a particular account of Mr. Coigly and his family, but he forbore to state what would come before the public in a more interesting form, Mr. Coigly having written Memoirs of himself, after his conviction, which are now in the press, with others of his papers, and will be shortly published by a gentleman, a relation and one of his earliest friends, to whom he confided them. The reader, therefore, will find no more here, on that subject, than merely what is necessary to shew that while he possessed noble qualities he was a man of a respectable situation and of an amiable private character.

ERRATA.

In page 5 of the Appendix, for "Hacklestone," read "Hackleton;" for "Lewis Westerham," read "Westerham;" for "William Blatcher," read "George Blatcher."

OBSERVATIONS

ON THE TRIAL OF

JAMES COIGLY,

FOR HIGH-TREASON, &c.

BEFORE I enter upon the important subject of these pages, I hope I shall be pardoned if I call the reader's attention, for a moment, to the difficulties of my situation. Powerful circumstances have imposed upon me a duty, whose obligations I cannot question, in the discharge of which I have to discuss the merits of a solemn judicial proceeding of the country---namely, the trial of Mr. Coigly, for high-treason. The enquiry implies, that I am not content with the character of that proceeding. But the decision of a jury, the issue of which has been the shedding of blood, the community is accustomed to regard as a subject to be kept sacred from examination; and not without an excuse, for the shedding of innocent blood, by judicial proceedings, which they would sometimes have occasion to contemplate, is at once the greatest of public

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errors,

errors, and amongst the greatest of public calamities.

But it is not on this topic only that I may have to encounter the antipathy of my reader : for in this enquiry is involved censure, which I feel to be of a very painful nature, and to the publication of which all generous minds will be naturally averse, if they do not happen to accord with me in my views of the object for which I contend.

If it were possible for me to impress my reader with a sense of my anxiety, adequate to its extent, some part of it would be removed : but if that cannot be, there is an indulgence on which I rely. I look to my reader for a most liberal confidence in the purity of my motives. Professions sometimes carry with them the evidence of their integrity ; and I hope mine, on this occasion, are of that number. To rescue the memory of an unfortunate man from mistake, is the object of this Publication. If other topics are mingled with this, it is because they cannot be separated from it. The conduct of the government, and of some individuals, however it may be handled here, would have drawn no public animadversion from me, if it had been unconnected with my subject ; and here it shall pass without all comment, but that which is necessary to the full and explicit statement of my case.

This trial opened with a proceeding that filled the mind of every humane spectator with disgust at
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the transaction it disclosed, and with apprehensions for the character of the trial. A letter was laid before the court, with proofs of its authenticity, written by the Rev. Mr. Arthur Young, to a gentleman of Bury St. Edmond's, exposing a deliberate and successful attempt of the writer to prejudice some of the jurymen against the prisoners*. A remedy was applied to the evil; but the question now remains---Was the remedy complete?

The jurymen who were influenced by the practices of Mr. Arthur Young were summoned from the hundred of Blackburn, and all the jurymen from that hundred were set aside, on a proposition from the attorney-general. Did this remedy leave the pannel as it stood before the disclosure of that letter, and as a pannel ought to stand, in the presence of God, and in the sight of the country---that is, firmly possessing the character of impartiality between the king and the prisoner? It is not possible to dissect the transaction, with the care it deserves, and come to this conclusion. Mr. Young did not act from motives of a private nature; he had neither a personal knowledge of the prisoner, nor any personal malice against him. He acted upon motives of public policy. His passions were inflamed with apprehensions of a foreign invasion;

* See, in the Appendix, No. I, a copy of this letter, together with a short account of an apology for it by the writer's father.

he supposed there were persons in this country ready to abet the invaders; and whether the prisoner were guilty or innocent, he viewed the trial as an opportunity to be seized, of making an example "for the security of the realm."

He argued in a manner natural enough to a person of great zeal and with ordinary intellect, and in a manner which is but too general among politicians. And accordingly we see he not only satisfied his own conscience, but the consciences of the jurymen whom he reasoned with, by the sanction of a state necessity. What we have to do with this transaction, is, to determine if it were a proof of nothing more than a partial and narrow infection in the pannel? or rather, if it were not a symptom of infection in other parts? Let it not be supposed that I mean to push this reasoning farther than I do, and that I would insinuate, that any juror who sat on Mr. Coigly was actually tainted like the jurymen of Blackburn. What I have to say, it is my design and my interest to speak without disguise. No man persuaded of the prisoner's innocence, nor any man convinced of his guilt, and not thirsting for his blood, but regarding the justice of the country in his trial, could sit, after the disclosure of that letter, with a quiet heart, to see him delivered up to that pannel, to take his chance for a fair or a partial jury, as the honour of some of its members or the practices of such men as Mr. Young might happen to prevail.

Independent

Independent of this reasoning, what was the *fact* at the moment of the dismissal of the jurymen of Blackburn? Did every other part of the pannel* remain free from accusation? No!---Did every other part escape at least from all *proof* of partiality? Not even that! There was one person on the pannel, who himself betrayed his prejudice and partiality; and this was a man of a condition and character so little exposed to suspicion, that any management, short of an undisguised and loudly-proclaimed partiality, would have given him an opportunity to slip into the box with the reputation of a fair and honourable juror.

But did all reasonable apprehension of partiality in the pannel end with the remedy applied to this case? When the pannel was purged of Mr. Raikes, was it then safe to say --“ The pannel is now pure; and the prisoner, if his conscience be clear, may view his fate with complacency?” The vulgar indiscretion of Mr. Raikes† was a solitary instance of the kind, amongst jurors of his description and rank in life. But who, standing in the prisoner’s place, would not tremble to say, it was also a solitary example, among such, of prejudice and partiality? This was not a situation in which to speculate so

* The PANNEL includes all the jurymen returned by the sheriff, and the reader must be careful not to confound it with the JURY who served on the trial.

† See, in the Appendix, No. II. the account of the challenge of Mr. Raikes, for cause,

unreasonably.

unreasonably. Was Mr. Raikes less scrupulous and conscientious than other persons on the pannel, of his rank and description? That was an awful question to be put to the prisoner, tied down as he was to abide by the decision!

The instances of Mr. Arthur Young, and of the jurymen of Blackburn, and of Mr. Raikes, not only prove that the pannel was tainted, but excite a suspicion, never to be allayed, that the poison had spread into the pannel, beyond the reach of the remedy. Let the temper betrayed by those instances be considered. Before Mr. Young and Mr. Raikes could commit acts so odious to the general feelings of their countrymen, the panic with which they were struck must have been extreme. But what evidence have we that the panic, so violent in them, had not spread among other gentlemen who were jurymen, or who had influence on jurymen?

I cannot but suppose a case that might easily have happened: Suppose the practices of Mr. Arthur Young had remained a secret, and it was a miracle they were discovered, how would the case have stood when Mr. Raikes had betrayed his partiality, and was in consequence of it cast out from the pannel? Then, on the same reasoning which must be used to oppose my present argument, it might have been said, "the pannel is now free from any infection." And indeed, if it could not be so said, how was the prisoner to be tried by a jury

jury from that pannel, with any show of justice? But in that case, the hundred of Blackburn would still have lurked in the pannel, and the prisoner, unfortunate as he was in the event, would not have had even the chance he acquired by the exclusion of those jurymen.

To dismiss this part of the subject, I ask, if neither the instance of the Blackburn hundred, nor that of Mr. Raikes, had come to the knowledge of the prisoner, what would have been his situation? A jury would have sat on the question of his innocence or guilt, taken from among men, some of whom had prejudged his case, and determined upon his fate!---But when these instances were before him, what had he a right to say?---It was his privilege, and I will add, his duty, to say, "I cannot justly be tried by a jury taken from a pannel which is impeached and tainted, as a whole, by these partial and almost miraculous detections."

Was the next step, in the course of filling the jury-box, of a nature to make us forget the character of the pannel? I speak now of the challenges in behalf of the crown. I will not hesitate to say, nor will any man who is acquainted with the history of state-trials, that the object and tendency of the challenges of the crown-lawyers are to exclude from the jury-box persons from whose independent character the administration of the day has nothing to hope, and to make way for the dependants,

pendants, the partizans, and the friends of the ruling party. I should be glad that this were a questionable point, and to lose the benefit of my argument here; for in times when our lives, our fame, and all our temporal interests, are in danger for political opinions, it would render us more secure from the bondage of terror, than any of us are likely to be, if we were not subject, as we now are, by means of the crown-challenges, to be tried by a faction in the country invested with the deceitful character of its jury.

In the trial of Mr. Horne Tooke for high treason, in 1794, the attorney-general challenged seven of the jurymen, and when the pannel was gone through, there were only nine jurors in the box. The attorney-general being called upon for his cause of challenge, had no cause to give. What were the attorney-general's motives for challenging those gentlemen? Liberality and candour are virtues to be worshiped in society; but cowardice, that usurps their place, is a most mischievous failing. Yet, God forbid that I should wound the delicacy of the attorney-general, beyond the honest purposes of a sincere and necessary argument. He acted, in his station, according to its practices. What then were his motives for challenging gentlemen, against whom he had no cause that could be assigned to the public? He had no such cause, or he would have stated it for the sake of his reputation. There is not, I believe, a reason for these challenges

challenges to be discovered by human industry but a secret knowledge or a secret sentiment of the attorney-general, that the gentlemen in question were not to be warped by reasons of state, in their examination of the guilt or innocence of the accused.

My present remarks are incumbered with a little difficulty, arising from a variance between the actual obligations imposed upon an attorney-general, and the character with which he stands clothed in theory. He appears in the high and honourable character of public accuser, bound to see justice done to the country, *of which the accused is part*; yet meanwhile it is the condition on which he holds his office, to use it for the interests of the governing party, which may be, and sometimes are in opposition to those of the country. We must look steadily at these things, or we cannot arrive at the true merits of such a trial as this I am examining. A state trial is often an engine of state policy. And it is in vain to expect that an attorney-general will divest himself of the passions and forget the interests of an administration, of which, in fact, he is part; and it is also childish to suppose he will not avail himself of the power of the crown-challenges, to gratify those passions, and promote those interests, as long as courts of justice uphold him in the exercise of that power.

If the character I give of the crown-challenges be thought partial, let the reader turn to the legal

history of these challenges, and view their features in that mirror. The statute of the 23d of Ed. I, called AN ORDINANCE FOR INQUESTS, says---
 “ Of inquests to be taken before any of the justices, and wherein our lord the king is party, howsoever it be, it is agreed and ordained by the king, and all his council, that from henceforth, notwithstanding it be alledged by them that sue for the king, that the jurors of those inquests, or some of them, be not indifferent for the king, yet such inquests shall not remain untaken for that cause; *but if they that sue for the king will challenge any of those jurors, they shall assign of their challenge a cause certain; and the truth of the same challenge shall be enquired of, according to the custom of the court; and let it be proceeded to the taking of the same inquisitions, as it shall be found, if the challenges be true or not, after the discretion of the justices.*”

Why did the framers of this statute interpose between the crown and the accused in this case? Because the law, when it speaks or acts in its purity, is jealous of the executive power, and could not be silent on a subject of such exquisite jealousy as that of the crown-challenges in cases of high treason. The law looks, as far as human capacity affords the means, into the future; and in the provisions of this statute, it had an eye to times when there might exist an unprincipled administration, having at its beck an unprincipled attorney-general.

general. In such times it foresaw it would be possible for the crown, with the aid of peremptory challenges, to pack a jury at pleasure. The vassals of such an administration would return a pannel so numerous, as to make the peremptory challenges of the prisoner *a dead letter*; they would return a partial pannel, to give the minister a majority on it; and then would come that most servile and most faithful of instruments a venal corrupt attorney-general with his peremptory challenges, to close this scene of a mimic jury, by sweeping from the pannel the persons of courage and honesty who would attend to the case between the king and the prisoner, in defiance of the suggestions of either passion or corruption.

This statute, one would think, was explicit enough in its terms, and its meaning out of the reach of the boldest chicanery.---“If they that sue for the king will challenge any juror, they shall assign of their challenge a cause certain; and the truth of the same challenge shall be enquired of.” Thus speaks the statute! yet behold the crown-lawyers actively betraying the character of their challenges, in an open impatient usurpation upon its authority! The crown-lawyers, aided by corrupt judges, set up an answer to the statute *in their practice*; and then they argue the *practice* against the *statute*.

It is difficult to pursue this point with patience when we come to the pretensions of judges and

lawyers. Judges are ministers of the law, and they affect to answer with an argument of practice, when a positive and plain statute is produced for their rule.

But let us see their answer. The crown, they say, shall shew its cause of challenge, *but not till the pannel is gone through; and if the jury-box is filled before the pannel is gone through, the crown shall not shew its cause.* Here, then, we come at the naked character of the crown-challenges. They are to all intents and purposes peremptory challenges. The crown by means of a corrupt judge can make the pannel so extensive as to evade the point at which the *practice* says, it shall shew its cause. What remains to be said of its challenges, and who will say they are CHALLENGES FOR CAUSE?

I have nothing to do with the illegality and iniquity of this practice, farther than the object and tendency of the crown-challenges; and now I ask why all this anxiety in the judges and the crown-lawyers, at the expence of all decorum, to get rid of the statute? The crown-lawyers have power by the statute to challenge for cause. What then is the use of the peremptory challenges of the crown, if it be not for state purposes, which the crown-lawyers have too much decency to disclose? The peremptory challenges of the accused in cases of high-treason, were given in the spirit that ought to distinguish all criminal law. An accused person, in a case of high-treason, has an enormous weight
of

of influence, open or concealed, and of prejudice, malicious or honest, to resist, in the fairest of these trials; to counteract which, not wholly but in part, his peremptory challenges are given by the mild spirit of the law. But the crown-lawyers have no reasons for peremptory challenges of an equitable nature, nor any uses for them but such as will not bear the light.

And this character of the crown-challenges, is illustrated by the times and judges that permitted them to creep into the practice. It was under a STUART, when the crown entertained no scruple respecting means that were efficacious to its ends; and the abettors of these challenges were amongst those corrupt judges, who "traitorously and wickedly endeavoured to subvert the fundamental laws of England;" to speak in the words in which some of them were afterwards accused in articles of impeachment*.

With this character of the challenges of the crown-lawyers, whose fidelity I submit to the understanding and observation of my reader, let us look at the trial before us.

The attorney-general challenged *five-and-twenty* gentlemen of the pannel. Here, then, we are arrived at an awful and portentous period for the prisoner! The pannel is *proved in open court* to be

* See, in Gurney's Report of this Trial, Mr. Scott's able argument against these challenges.

tainted with prejudice against the prisoner, and no remedy is applied to the evil commensurate with its probable extent; yet the unfortunate man is not permitted to take the chance this pannel affords him to escape from the charge. The attorney-general stands up with an illegal power, usurped by servants of the crown with the connivance of mercenary judges---the attorney-general stands up with this odious power, to deprive the prisoner of five-and-twenty gentlemen, respecting whom, it is fair to conclude, there was no reasonable objection *in behalf of the justice of the country*, nor any objection on the part of the crown-lawyers, but such as would not bear the light of day.

Imputations of partiality and dishonesty, are not things to be thrown about at random, and it is a hateful office to employ them in any shape or degree. But what is to be done? Is this unfortunate case to be stated with entire parts expunged? or is it to be distinctly laid open to the reader as it exists? My reader will protest against the former part of the alternative: he cannot want a mutilated case; and my conscience is with him. I could have shrunk from this duty from motives of fear, but I cannot be unfaithful to it by conscious concealment and reserve.

We have, then, to look at the pannel after the attorney-general has concluded his challenges. When we view the spot on which it was struck, we cannot

cannot regard it at any period with much satisfaction. I do not mean to single out the county of Kent for any dishonourable propensity. I speak of the whole vicinity of the metropolis. We all know that it is inhabited by wealthy traders, and wealthy landholders; and few of us are so ignorant as not to know that the affairs of this country are brought into such a state by its administration, that the mercantile interest is wholly*, and the landed interest in great part, at the feet of the minister.

Then what a hideous transaction is here! The officer who returns this pannel may be amongst the individuals who have preserved their independence. But where is he to look for his pannel? The country around him is colonized with rich traders from London, or the descendants of that class, who have possessed themselves of the lands in the neighbourhood of London. Without charging those men with corruption, I impute to them partialities unfavourable to a prisoner in a case of high-treason; partialities belonging to the weakness of human nature, but partialities that will have their silent effect in despite of the honour of such men. To such a pannel the crown-lawyers come with their scrutinizing eyes and habits of business, to see whom they may challenge for their own secret reasons.

* I do not speak of individuals, but of the mass of wealth and influence included in the mercantile part of the nation.

Look

Look to the fact ! Who are the bulk of the persons they challenge ? Are they contractors, or tradesmen of the crown, or men in open connection with administration ? No, to be sure (the crown-lawyers will answer) the question is ridiculous ! I know it would be so, if the familiarity of the evil of which I complain were not such as to make even the honest bye-stander insensible of its enormity*.

But there are independent men in the neighbourhood of London, as well as in every other part of England ; and it is some consolation, amidst the evils of this case, that five-and-twenty of the jurymen fell under the suspicions of the attorney-general. I will plainly tell him, I wish the number had been greater. Nevertheless, the unfortunate prisoner was left exposed to prejudice and partiality, by the removal of five-and-twenty honest men from the pannel. In the trial of Mr. Horne Tooke, it was said by Lord Chief Justice Eyre---“ At the same time, I feel that the circumstance, which is become absolutely necessary, of making the pannels vastly more numerous than they were in ancient times, might *give to the crown an improper advantage*, arising out of that rule (*He was speaking of the crown-challenges*) and whenever we shall see that improper advantage attempted to be taken, it will be for the serious consideration of the court, whether they will not put it into some course

* See, in the Appendix, No. III, a list and description of the jurymen challenged by the crown.

to prevent that advantage being taken." When is the time of relief to arrive? What is the number of challenges that constitute an improper advantage? And when are the people of this country to know by what rules they are to be tried, when they fall into the hands of the crown-lawyers?

These are questions in which we are all concerned, and in which the prisoner was most deeply concerned. The hope held out by the chief justice was illusory to him. The crown-lawyers disdained to take their peremptory challenges as an *indulgence*. "It is no indulgence," said one of them; and the court acquiesced in this pretension; so that the attorney-general might have challenged one hundred honest men of the pannel, if there had been so many detected by him. What then did the declaration of Lord Chief Justice Eyre come to? And what did he mean by *an improper advantage being given to the crown*, if it were not that dreadful advantage of excluding from the jury-box persons to whom the crown-lawyers could not put an unproved unsupported case? What besides could the chief justice mean? The crown-lawyers may shew cause of challenge; and again and again I ask, What is the cause that must not be revealed?

Let it not be supposed, that I have drawn too much of my reader's attention to the two objects which have hitherto occupied these pages. They offer matter for the consideration of every honest man in the country; and although my plan does

not directly lead me to examine them on the broad ground of the public interest, I cannot but recommend to my reader, to view them in that way. But as to my plan, the developement of them is essential. I find a case of unmatched persecution and severity. I see the unfortunate man, of whom I am speaking, hemmed in, on all sides, from the moment he is accused, by designing persons and adverse circumstances. And although the practices of such as endeavoured to influence the jury, the passions of jurymen themselves, and the unprecedented number of the challenges of the crown, might each and all of them be harmless at length, in this instance, yet they are never to be forgotten, for their marking the very commencement of this trial with the hard character that stuck to every subsequent part.

Before I proceed to the next point in this enquiry, which is, the character of the case made out by the crown, I have to guard, nevertheless, against a misapplication of the preceding observations. I have proved the pannel to be unfit to try the question of the prisoner's innocence or guilt, inasmuch as it stood convicted of partiality; and I have shewn that the numerous challenges of the attorney-general could have no tendency but to fill the jury-box with such persons as suited his secret purposes. Does it follow, that I impeach the JURY for partiality? I answer most unequivocally, that I do not; and I desire no such conclusion to be made.

Notwithstanding

Notwithstanding the corruption of the PANNEL, it is possible that no person passed into the jury-box who belonged to the infected part. The attorney-general's challenges might exclude impartial jurymen, and leave a space for jurymen that were prejudiced or corrupted; but they had no active power to corrupt;---they had no active power to place ignorant or interested men in the jury-box. From the moment the jury is impannelled, I commit them to God and their own consciences. No man who is a friend to the trial by jury, will be forward to impeach a jury that has decided on a question of life or death. This country may hereafter fall away from its integrity, till a jurymen shall not hesitate to acknowledge he went into the box to condemn, with or without evidence; but till that happen, or till it happen that a suspicion not to be rejected, arises against a jury *actually inclosed in the box*, as well as against *parts of the pannel*, it is not only the most candid way to suppose a jury free from prejudice and corruption, but it is the safest for the purposes of justice. Jurors will seldom act with integrity, where they have strongly to fear subsequent censure for their motives. To disgrace and sully men in their own eyes, is to prepare them for dishonourable actions.

To understand the character of the case made out by the crown, it is necessary to take a view of the nature of the case the crown was bound to offer to the jury, in order to maintain the indictment.

The overt acts charged in the indictment, are all, in the end, absolutely narrowed to one, namely, *that of the prisoner's possession of a treasonable paper, with an intention of being the bearer of it to the government of France.*

The statement of this overt act contains two distinct propositions: first, the prisoner's possession of the paper; and, secondly, his intention of being the bearer of it to the government of France.

The crown, therefore, was bound not merely to prove the prisoner's possession of the paper, but as plainly, and if possible more carefully, to prove that which was the sanction of the whole complaint, namely, his intention of conveying the paper to the government of France. The possession is an innocent act; as innocent (unconnected with the intention) as the going in a hoy to Whitstable, the walking from Whitstable to Margate, and the residence at an inn at Margate.

This seems a statement of things of such extreme simplicity, as not to be subject to be overlooked or forgotten by the reader. Yet, simple as the distinction is between the first member of the overt act and the second, there is a propensity in the minds of persons unused to consider such topics to include the one in the other, and, being convinced of the fact of the possession, to assent to the whole of the charge.

It is often the fate of important and unfortunate

nate events, to derive the whole of their malignant character from gross and almost incredible mistakes in the actors of the scene. Things that are in every body's mouth, on all other occasions, are forgotten when we come to act. And now, one more obvious remark remains to be made, before we go on to the crown-evidence, and it regards the nature of the proof *exacted* by the law. In a trial for high-treason, the law demands *certainly* in the proofs of guilt. I may, without violence, say, that it demands *infallibility*---that is, infallibility in the conclusion from the facts as they stand before the jury.

With these observations impressed upon our minds, let us look at the crown-evidence ; and first at the evidence of the prisoner's *possession* of the treasonable paper.

As I mean to enable the reader to understand the whole of this case as completely as the evidence will permit, I shall give such extracts from the evidence as seem necessary to this point *:

“ JOHN REVETT—*examined by the Solicitor-General.*

“ Q. Did you find any thing in the room in which you apprehended Quigley?—A. There was a great-coat upon a chair, on the left-hand side as I went into the room. Quigley begged to know whether he might not have his breakfast ; I told him, yes. After he had breakfasted, he said he was ready, and got up, and put on a blue Spencer great-coat.

* They are taken from Mr. Gurney's Report of the Trial.

I then

I then took him down into the parlour below, where this luggage was; then I went up again, and staid some little time in the room, and then Mr. O'Connor came down with me into the parlour. I asked them who the luggage belonged to?

"Q. Were they altogether in the parlour then?—A. Yes. The direction to some of them was to Colonel Morris; they refused to give any account—none of them would give any account of the luggage; they refused to own any of the luggage. I went up stairs, and in a bed-room there was a small cloke-bag; I asked Mr. O'Connor, if it belonged to him? he would not own it; he said, probably I might have put something into it; it was unbuckled, as if something had been taken out. I then looked into the sitting-room, where Mr. O'Connor and Quigley had been, and found that dark great-coat, with a black collar; I brought it down into the parlour, where the five prisoners were. I asked if the great-coat belonged to either of them? and particularly Mr. O'Connor and Quigley; they said, no. I then took a pocket-book, and some other things, out of the pocket; every thing that was in the great-coat pocket was taken out and tied up in a handkerchief, and I put it into my side-pocket; we then took the prisoners away, and the luggage, to the Hotel. After we had done so, Fugion, and a gentleman of the name of Twopenny, went into another room; I undid the handkerchief, and Mr. Twopenny opened the pocket-book, and pulled a paper out of the pocket-book; this is the pocket-book.

"JOHN REVETT—*cross-examined by Mr. Plumer.*

"Q. I understand you are a Bow-street runner?—A. Yes.

"Q. How long have you been in that sort of employment?—A. About three years.

"Q. What time in the morning was it when you arrested these people?—A. About nine or ten o'clock.

"Q. After

" Q. After you had taken the papers in the morning, did you at that place take any account of them?—A. I did not mark them there certainly.

" Q. Did you take any list or inventory of them?—A. I did not.

" Q. Did any body else, in your presence?—A. No.

" Q. Were they marked by you, or by any body else, while you were at Margate?—A. They were not.

" Q. Were they sealed up by you, or by any body else?—A. They were not.

" Q. Did you take them before any magistrate, to have them examined by him, at Margate?—A. No.

" Q. Was there any magistrate at Margate?—A. I do not know.

" Q. Do you recollect being desired to send for a magistrate, and have the papers noted and inventoried at the time, in order that there might be no mistake about what papers there were?—A. Probably it might be so.

" Q. Was that before or after the great-coat was found?—A. After.

" Q. You say, you first found Quigley in a room where there were some tea-things?—A. Yes.

" Q. Then you went down with him, leaving nobody in that room?—A. I left Mr. O'Connor there, and two soldiers.

" Q. When you went down with Mr. Quigley, you left Mr. O'Connor there, with two soldiers?—A. Yes.

" Q. How long was it before you came back again?—A. Not more than five minutes, I suppose.

" Q. You went into another room, you said, then, with Mr. O'Connor?—A. No, I went into a bed-room, by myself.

" Q. That was before you returned into this room, where the tea-things were?—A. I believe it was.

" Q. When you found the great-coat, you said, you took
it

it down stairs, and asked them, whether it belonged to them ?

—A. I did.

“ Q. Had you at that time examined whether there was any thing in the great-coat pocket ?—A. I had not.

“ Q. Where was it that you first examined the great-coat ?—A. In the parlour below.

“ Q. Who was present when you first examined it ?—A. The prisoners were all in the room, and Fugion.

“ Q. Who did you find in the room up stairs, where you found this great-coat, when you took the great-coat down stairs ?—A. I do not think any body was in the room at that time. I had seen it in the room.

“ Q. But you had left the room, and when you came back into the room, you found the door open, and nobody then was in the room, but the great-coat was lying upon the chair ?—A. Just so.

“ Q. This was a public inn at Margate ?—A. Yes.

“ Q. At ten o'clock in the morning ?—A. Between nine and ten.

“ Q. There were a great many people, I believe, in the house at that time ?—A. There were, soon after we went in.

“ Q. Do you mean to say you took the papers out of the pocket-book in the presence of the prisoners ?—A. No, they were not present.

“ Q. Then you took a pocket-book out of the great-coat pocket and other things ?—A. Yes ; I took the papers out, and tied them up in a handkerchief ; there were no papers examined in the presence of the prisoners.

“ Q. Did you keep the papers in your possession after they were taken out of the great-coat pocket ?—A. I put them in my inside pocket.

“ Q. You did not examine any of them ?—A. Yes ; one that Mr. Twopenny shewed me.

“ Q. You did not examine them in the presence of the prisoners ?—A. No.

“ Q. Who

" Q. Who were present when you examined them ?—A. Twopenny, Fugion, and myself.

" Q. What is Mr. Twopenny ?—A. An attorney, I believe, at Rochester.

" Q. I desire you will recollect yourself a little ; when you got into that room, and examined these things by yourselves, was not that paper separate from the pocket-book ?—A. No.

" Q. Recollect yourself, and say, whether you can be quite clear upon that subject ?—A. I can ; the paper was not in the pocket of the pocket-book, but in the middle of the pocket-book, in this manner [*describing it*] with some more papers.

" Q. Did you read this paper that day ?—A. Mr. Twopenny read it ; I did not.

" Q. Did you hear it read ?—A. I heard part of it read.

" Q. When was the first time that you marked any of the papers ?—A. The first paper I marked was when I arrived at Bow-street.

" EDWARD FUGION—*examined by Mr. Garrow.*

" Q. Did you see any thing of a great-coat ?—A. I saw a great-coat up stairs, in the room where Quigley was sitting, when I first went up stairs.

" Q. Where did you see that great-coat, after you had secured the prisoners ?—A. I saw it when Revett brought it down stairs with him, when he came down with Mr. O'Connor.

" Q. By this time, all the prisoners were assembled there, together ?—A. Yes ; they were asked who the great-coat belonged to : nobody made any answer.

" Q. Did they make any answer, or remain silent ?—A. I believe they remained silent.

" Q. Did you see any thing taken from the great-coat ?—A. I saw a pocket-book.

" Q. Should you know that pocket-book again ?—Is this
E it ?

it? [*showing a pocket-book to the witness*].—A. I did not mark it; it was a pocket-book of that appearance. I believe that to be it.

“ Q. Who took that pocket-book out?—A. Revett did; and tied that, and some other things he took out, up in a handkerchief, and put it in his side-pocket; we then took the prisoners to the Hotel, at Margate.

“ Q. Did you afterwards see Revett produce that handkerchief, with the contents, to any body?—A. Yes, to Mr. Twopenny.

“ Q. Did you see the handkerchief opened?—A. I did.

“ Q. Did you see any body take any paper from it, and read it?—A. Mr. Twopenny did.

“ Q. Did you see him take that paper out of the pocket-book, which you had seen Revett take out of the great-coat pocket,—A. I did.

“ Q. Did you hear Mr. Twopenny read it?—A. I did, and read it afterwards myself.

“ Q. What was done with it, after it had been so read?—A. It was returned to Revett again, and put into the same pocket-book, and delivered into Revett's care.

“ Q. When did you next see that pocket-book and the paper again?—A. The next day, Thursday, March 1, at Bow-street.

“ Q. Did you mark that paper?—A. I did.

“ Q. Can you take upon yourself to say, that the paper which you marked at Bow-street, and which you saw in Twopenny's hand, and read, was the same you saw taken out of the pocket-book at Margate?—A. I am positive of it; this is the paper [*the Address to the Executive Directory of France*].

“ Q. Look at that great-coat; is that the coat you saw when you first went into the room at Margate, where Mr. Fivey was?—A. I saw a coat, but do not know what the colour was.

EDWARD

" EDWARD FUGION—*cross-examined by Mr. Dallas.*

" Q. When you first went into the room where Mr. O'Coigly was, you saw a great-coat?—A. Yes.

" Q. But whether this is the great-coat you are not able to swear. now, are you able to swear to this fact—After you had arrested Mr. O'Coigly in the room up one pair of stairs, in whose charge and custody was Mr. O'Coigly left?—A. I did not go into the bed-room; as soon as I had searched Mr. O'Coigly, and taken that dagger from him, I came down stairs to see after the other prisoners.

" Q. Who was left in the room with him?—A. I left Revett.

" Q. From the time Mr. O'Coigly was arrested, was he suffered to quit the room in which he was arrested?—A. He was arrested up stairs.

" Q. Was he in the bed-room where the great-coat was?—A. He was not in the bed-room.

" Q. When the great-coat was shewn to you by Revett, was it in the room in which you first saw it?—A. He did not shew it me there; it was brought by him down stairs.

" Q. Then whether the great-coat you saw in the room below, was the same great-coat you had seen up stairs, you cannot tell?—A. No.

" Q. Who were present when the papers were afterwards opened, at the hotel, at Margate?—A. Mr. Twopenny, myself, and Revett.

" Q. Then this handkerchief that had been tied up, was opened at the hotel, when all the prisoners were absent?—A. It was.

" Q. Where were they at the time?—A. In the assembly-room.

" Q. In what room were you when the papers were opened?—A. I think, a front parlour.

" Q. The papers were not marked when they were seized, nor when the handkerchief was opened at the hotel?—A. They were not.

“ EDWARD FUGION—*cross-examined by Mr. Gurney.*

“ Q. You were asked for your authority, and you told them, you were a Bow-street officer, and that you intended to take them to Bow-street, or to the secretary of state’s?—

A. I did.

“ Q. Did they not say, they should answer no questions till they came before a proper authority?—A. They did.

“ MR. WILLIAM TWOPENNY—*examined by Mr. Adam.*

“ Q. Do you remember a great-coat being brought down?—A. I do.

“ Q. Did any conversation pass?—A. They were severally asked, which of them it belonged to? they all denied its belonging to either of them.

“ Q. Did they say any thing about the baggage which was in the parlour?—A. They denied that also.

“ Q. Did you see Mrs. Cricket, the mistress of the house, there?—A. Yes.

“ Q. In the presence of the prisoners?—A. Yes; I desired they might be brought.

“ Q. What did she say with respect to the baggage of the prisoners?—A. She said the baggage came with them; I wanted her to discriminate which baggage belonged to each; she could not.

“ Q. This was in the presence of the prisoners?—A. Yes.

“ Q. Was the great-coat particularly asked about?—A. It was; she said that likewise came with them.

“ Q. Were you present when any thing was taken out of the pocket?—A. I think they were in the act of taking them out at the moment.

“ Q. Where did you go to, from the King’s Head?—A. To Benson’s Hotel.

“ Q. When you were at Benson’s Hotel, did Mr. Revett take the handkerchief out of his pocket?—A. He did, from whence he had put it.

“ Q. What

" Q. What did you find in that handkerchief?—A. A pocket-book.

" Q. Did you open that pocket-book?—A. I did.

" Q. Look at that pocket-book; is that the pocket-book?—A. It is.

" Q. Look at that paper; did you find that paper in the pocket-book?—A. I did.

" Q. Did you read it at the time?—A. I did, several times. I read it first to myself, in order to know what the contents were; and upon discovering what the contents were, I then read it to them.

" Q. In what manner did you find it in the pocket-book?—A. There was some writing-paper in the pocket-book, and this was in the writing-paper; the top of the writing-paper was pressed down like a sheet of paper folded together, and the upper part was rather bent over it, so as to contain this paper within; so that, if I had taken that paper out by itself, this would not have appeared.

" Q. Was it blank paper?—A. It was; at least I did not see any writing upon it: this was in one of the folds of it, not directly in the middle; this part was bent over it, so that it was confined.

" Q. You are quite sure this is the same paper?—A. Yes, I am.

" Mr. WILLIAM TWOPENNY—*cross-examined by Mr. Plumer.*

" Q. What room did they first go into, when they came into the King's Head?—A. A parlour below stairs.

" Q. At that time had they got the great-coat below stairs?—A. Yes; I never went any farther into the house.

" Q. In whose possession was it, when you first saw it?—A. Revett's.

" Q. Below stairs?—A. Yes.

" Q. Was any thing taken out of it in the presence of the prisoners?

prisoners?—A. I think the things were then taking out, in the instant, in the parlour.

“ Q. When the prisoners were present?—A. The prisoners were then present; they were then, I think, either in the act of taking them out, or had just taken them out.

“ Q. But you saw them taken out of the great-coat pocket, in the parlour below stairs, in the presence of the prisoners?—A. Yes.

“ Q. That you are positive of, are you?—A. In the way I state it, I am certain of it.

“ Q. You are positive that that pocket-book in particular was produced in the parlour below stairs, when the prisoners were present?—A. Yes; and the things were put into the handkerchief upon the table.

“ Q. Did you go with these two persons, Revett and Fugion, into any other room?—A. Not in that house.

“ Q. Did you go into a room with them, when nobody else was present, at any other house?—A. At Benson's Hotel.

“ ANN CRICKET—*examined by the Attorney-General.*

“ Q. They (the prisoners) slept at your house that night?—A. Yes.

“ Q. Had you any other guests that night?—A. No other strangers in the house.

“ Q. Did any other strangers come in as guests before these persons were apprehended the next morning?—A. Nobody else but the town's people.

“ Q. Did any body else that had baggage come in besides these three gentlemen, and their two servants, till they were apprehended?—A. None else.

“ Q. Just look at that great-coat; does it belong to any of your family, or any body else that you know any thing of?—A. It is not my property, nor the property of any body that I know.

“ JANE

" JANE DEXTER—*examined by the Solicitor-General.*

" Q. You are sister to Mrs. Cricket?—A. Yes.

" Q. You live with her?—A. Yes.

" Q. Do you remember any gentlemen coming into your house on Tuesday, the 27th of February?—A. Yes.

" Q. Was any thing said to you about the baggage?—A. No.

" Q. Had you any other guests in the house that night?—A. None.

" Q. You did not see any baggage that belonged to any other persons?—A. No.

" Q. You had no other guests in the house?—A. No; nobody.

" Q. Do you remember seeing a great-coat with a black collar?—A. No, I do not.

" Q. Did that, [*showing the coat on the table*] belong to any of the family?—A. No.

" Q. Did you see it when the officer came in?—A. I did not.

" RICHARD SMITH—*examined by Mr. Garrow.*

" Q. I believe you are master of the Thomas and Stephen hoy, from London to Whitstable?—A. Yes.

" Q. Do you remember, upon the evening of Saturday, the 24th of February, any places being engaged in your hoy, for the next morning?—A. There were some packages came on board about ten o'clock in the evening of Saturday.

" Q. Did, the next morning, any person who is now here come to your hoy?—A. Yes, these four [*pointing to the prisoners*].

" Q. Did either of the persons who were your passengers upon that trip, wear a great-coat with a black collar?—A. I think I can tell the man that wore that coat.

" Q. Who wore that coat?—A. The stout gentleman, O'Coigly, had that coat on, and he wore a hairy cap.

" Q. A

" Q. A cap of this sort [*shewing it to the witness*]?—A. Yes; a cap of that sort, and a great-coat of this kind.

" Q. You have seen the great-coat since these persons were apprehended?—A. Yes.

" Q. Did you know it to be the great-coat O'Coigly wore in that trip?—A. Yes; and I have two pieces I cut out of it.

" RICHARD SMITH—*cross-examined by Mr. Dallas.*

" Q. When did you mark that great-coat?—A. When I was in London.

" Q. How long was that after Mr. O'Coigly was on board the hoy?—I cannot say, rightly.

" Q. Was not that great-coat produced to you by some person in London, as the great-coat that Mr. O'Coigly had in the hoy?—A. It was brought to me to say whether it was?

" Q. Was it not brought to the house where you were, to ask you, whether that was the great-coat Mr. O'Coigly had in the hoy?—A. Yes.

" Q. Was it produced to you singly, or with any other great-coats?—A. It was in the room when I went in.

" Q. What place in London was it where you saw this great-coat in the room, and pitched upon it as the one Mr. O'Coigly had worn?—A. The secretary of state's office.

" Q. As soon as you saw it, did you fix upon that as the one he wore?—A. Yes, and told the gentlemen there so.

" HENRY THOMPSETT—*examined by the Attorney-General.*

" Q. What time did you set out from Whitstable?—A. A quarter before seven in the morning.

" Q. At what time did you arrive at Margate?—A. About four in the afternoon; we stopped on the road to breakfast, at Mrs. Raddon's, at a place called Sarr.

" Q. Was that on the Tuesday?—A. Tuesday morning.

" Q. Did

"Q. Did Captain Jones go with you?—A. He and the two servants walked along-side the cart, all the way; we got to Margate about four.

"Q. Had you any other conversation with the Captain, in your way from Whitstable to Margate?—A. After we left Sarr, Captain Jones asked me, what business I was? I told him, I was a trader, and lived about forty miles from the place where I was then: I told him, the people at Whitstable were all in a boggle about him.

"Q. What did you mean by that expression?—A. All in confusion to know where he was going; that they were in a mistrust about him, about where he was going.

"Q. Do you recollect what sort of baggage it was you took in your cart?—A. Yes, this is some of the luggage.

"Q. Do you recollect any thing in particular?—A. Yes; that box Captain Jones told me to take great care of, particularly, and a coat that was tied up; when we breakfasted, he ordered me to take the coat out of the cart into the parlour; I gave it to the person that stands behind him, that acted as his servant; he took it in the parlour.

"Q. Should you know the coat again, if you saw it?—A. It was something like one of these coats; it was tied up with a tea-chest in it.

"HENRY THOMPSETT—*cross-examined by Mr. Dallas.*

"Q. You told Captain Jones, on the way to Margate, that the people at Whitstable were in a state of distrust about him?—A. I did."

I have set this evidence in array against the prisoner, with all the strength it derives from being thus compact, and stripped of all comment on my part, as well as all other matter either uttered by these witnesses or by other witnesses that might tend to weaken it, for the purpose of con-

sidering what would be the effect, if every word of it were true.

It is to be observed of this evidence, that it consists of two members, namely, proof as to the property of the great-coat, and proof as to the custody of the paper in its pocket. That the coat was the property of the prisoner, is proved by nobody in a *positive* manner---not one! Smith is the only person who pretends to have seen Coigly with a great coat on; and he says---it was a coat *of the same kind* as that produced in court. This in itself is only *presumption*: and all the other evidence to that point is *presumption*, even of a less degree.

But if the coat were proved by *positive* evidence to be Coigly's, how stands the proof of the custody of the paper in its pocket? It rests solely upon the credibility of Revett. He was alone in the breakfast-room when he seized upon the great-coat. Observe what he says:---

“ Q. (*from Mr. Plumer*) Who did you find in the room up stairs, where you found this great-coat, when you took the great-coat down stairs? A. *I do not think any body was in the room at that time.* I had seen it in the room. Q. But you had left the room, and when you came back into the room, you found the door open, and nobody then was in the room, but the great-coat was lying upon the chair? A. *Just so.*”

Supposing now that Revett took the paper out of the pocket of the coat in the parlour, as stated by himself

himself and Fugion, and, I believe, by Mr. Twopenny (for there is some obscurity in his evidence as to that point) yet it does not necessarily follow, that he found the paper there; since he acted in such a manner as to have had an opportunity of putting something secretly into its pocket.

But although I say that the custody of the paper in the great-coat pocket rests solely upon the credibility of Revett, yet at this moment I mean to argue as if his evidence, as well as the evidence of all the other witnesses, were true; and then, I say, there is a want of *positive* proof to trace the paper into Coigly's possession, because Smith does not swear he is sure Coigly wore that very coat in whose pocket Revett says he found the paper. He does not even say it is his *opinion* that he wore the coat then in the court, but he *thinks* he can tell the man that wore a coat of *that kind*, and he fixes upon Mr. Coigly.

So much for the *certainty* of this evidence! Let us look now at the degree of *presumption* it raises against the prisoner. And we naturally begin with Revett's story.

There are two things that are very dark, and that require a great deal of explanation, in his account of his conduct. It is necessary to remind the reader, that Revett is a Bow-street officer, and (as he acknowledges in his evidence) had been, at this period, in that situation about three years; and consequently was not wholly a novice in his employ-

ment. How then did it happen, that this man saw a great-coat in the room with the prisoner, and which he supposed to belong to him, and that he left it, notwithstanding, in the room when he conducted the prisoner down stairs? The coat and every thing belonging to the prisoner would be objects of his attention and suspicion, not in consequence of after-thought, but instantly, by the habits of his office. It appears, by this account, that the coat was abandoned by this vigilant officer, to be removed by accident or design, the house being full of persons, some of whom might have been accomplices of the prisoner; for when he returned to take the coat, there was no person in the room, consequently no precaution taken against its removal. But this is not the whole of this suspicious matter. He remained in the room while Coigly breakfasted, and he had seen the coat when he first went into the room. How came he to sit so patiently, eager (it is to be remembered) after every proof of the prisoner's guilt, without examining the coat, *having already examined the person of the prisoner?*

But if this very extraordinary neglect were explained, there is a second matter that seems inconsistent with the neglect, and that in itself creates a great deal of difficulty. Revett, Fugion, and Twopenny, all state, that the former asked the prisoners severally, to whom the coat belonged. The counsel for the crown took care that it should be fully understood, that every one of the prisoners was
asked,

asked, to whom it belonged, meaning to raise a presumption of guilt upon their denial of the coat. Revett says, he asked the question, *as soon as he took the coat into the parlour*. What made him so anxious to know the owner of that coat, *which he had so grossly neglected, so absolutely, in fact, abandoned*? Was it the knowledge of its containing the treasonable paper? No. For it was expressly asked (by Mr. Plumer)---“Had you at that time” (*that is, when he asked, to whom the coat belonged*) “examined whether there was any thing in the great-coat pocket?” and he answers, “*I had not.*” What accounts for this anxiety to know the owner of the coat?---an anxiety the more surprising, because all the baggage had already been denied by all the prisoners generally, and therefore there appeared no particular motive for asking any questions about this coat.

The evidence of Fugion and Twopenny is meant to corroborate that of Revett, respecting the finding of the paper in the pocket of the coat. Fugion's evidence is very inconsiderable. He saw a great-coat in the breakfast-room where Coigly was arrested, but he did not observe the colour of the coat, and consequently was utterly ignorant even whether the coat Revett brought down, and from which he took the pocket-book and the paper, were the coat he had seen before or not. And as he was not in the breakfast-room when Revett took the coat, he is of course silent as to the important question,

tion, whether or not the paper were in the pocket of the coat at the time of Coigly's being arrested? Twopenny's evidence does not go so far as Fugion's on this head. He never saw the coat till it was in the parlour. Where the coat was found, or what was in it at the time of its being found, are all matters of which he has no knowledge.

But although Fugion and Twopenny prove little, I may say nothing, as to the main questions, of whose coat, and whose paper, these were; yet neither their evidence, nor that of Revett, is to be overlooked. Both one and the other cast a shade over the whole of the transactions at the King's-Head, and at Benson's Hotel, relative to the coat and the paper. There is a confusion in the three several relations, taking them as they ought to be taken,---as parts of one whole, that scarcely can belong to the relation of a real story. But beyond this, there are several variations in these depositions. Twopenny says, he "remembers a great-coat being brought down; and they (*the prisoners*) were severally asked which of them it belonged to." There is an ambiguity in the former part of this sentence. He remembers a great coat being brought down; but whether that means, he remembers seeing it brought down, or takes that to be the fact from seeing it in the parlour and hearing that it had been brought down, is not clear. Yet it seems he meant to say the former, for he positively says---the prisoners
were

were severally asked, in his presence, which of them the coat belonged to; and Revett and Fugion state that question to have been put "immediately on Revett's bringing it into the parlour."

Now that Twopenny saw the coat brought down is actually contradicted by himself a little further on, for he says, both on his examination by Mr. Adam and his cross-examination by Mr. Plumer, that "the things either were in the act of being taken out of the pocket, or had just been taken out, when he first entered the parlour." It is no matter at which of these periods Twopenny entered the room, for in neither case will the parts of this story properly unite; for Revett and Fugion state, that the question was put to the prisoners as to the owner of the great-coat, which question Twopenny says was put in his presence, *before the things were taken out of the pocket!*

Revett and Fugion state the handkerchief, in which Revett had put the contents of the great-coat pocket, to have been put by Revett into his *side* pocket; but Twopenny says, Revett took the handkerchief, when Revett, Fugion and himself were alone in a room in Benson's Hotel, from his *pocket*; and it is certain that the word pocket used in that general way means the *ordinary* pocket of a coat, and not a *side* pocket, which (by the way) Revett explains to be an *inside* pocket; and Twopenny, on his cross-examination, says, it was Revett's coat-pocket, having in his examination in
chief

chief said, it was his pocket, but both times certainly meaning his ordinary outside pocket, and not an *inside* pocket.

Revett says, he heard *part* of the treasonable paper read by Twopenny, in the presence of Fugion; Fugion says, he heard Twopenny read *the paper* (not *part*) and read it himself; and Twopenny says, having discovered the contents of the paper, he read it to Revett and Fugion.

These variations may appear to some to be slight and unimportant; but I cannot conceive them to be so, in this suspicious story. If a tale were fabricated by several persons, for any purpose, it is to be supposed they would not very grossly differ in the relation of it. In the great outlines they would agree, those being objects of their common passion and immediate attention; but in the little circumstances that attend the tale, there would be a danger of variation amongst the accomplices. This is the nature of such a thing; and it is fit to consider these variations, whatever be the conclusion drawn from them.

But Mr. Twopenny volunteers the detail of a circumstance, on which the other two are silent. He says, the treasonable paper was concealed in the folds of some writing paper, so that, had he taken out the latter by itself (I suppose he means without suspicion or scrutiny) the former could not have appeared. It is surprizing that this circumstance (which Twopenny thought of importance

ance enough, not only to be minutely detailed, but carefully described and explained) should not have been corroborated by the other two! It would have been thought officious in them, I grant, to volunteer this fact with Mr. Twopenny. But did it not look officious in Mr. Twopenny? He had said, he took the treasonable paper out of the pocket-book, and that plain fact did not want *bolstering* up (to use the phrase applied to the mending of suspicious evidence) by this curious circumstance.---But it was stated to shew the careful custody and the concealment of the paper. No doubt; Mr. Twopenny could not overlook its tendency. But Mr. Twopenny has something to explain to us, or rather we have contradictory facts to reconcile.---How are this care and concealment consistent with the prisoner's total carelessness about this paper (if it ever was in his possession) in all things but this, which could be of no use till the pocket-book fell into adverse hands, and which then could only be a safeguard against a very slovenly search, and such a search as was not to be expected from any adversary?

The evidence of Smith (the master of the White-stable hoy) which is meant to prove the property of the great-coat, involves the matter in more obscurity and difficulty, than that in which it is left by the story of the three gentlemen who detail the affair at Margate. Mr. Smith noticed the dress of

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Coigly,

Coigly, when he was on board his hoy, so particularly, as to form an opinion that the great-coat he wore was like one shewn to him first at the secretary of state's office, and afterward in the court. Very well. He had entertained suspicions of his passengers on that occasion, and it was natural he should notice them. But then he would give a simple account of the coat, at every place and time of his being questioned about it. Let us see his account. He says, he *thinks* he can tell the man that wore a coat of the *same kind* as that shewn to him in court, and that was Coigly.---This is his account, in answer to questions put to him by Mr. Garrow.---On his cross-examination, he says, he "no sooner saw the coat at the secretary of state's office, than"----what?----"he *fixed upon it as the one Coigly wore.*" Supposing Coigly to have worn a great-coat in the hoy (and it is always to be remembered, that it is in evidence that he had a spencer with him) almost any such man as Smith is, in Smith's situation, would have been as eager as he was to identify the coat; for he would feel an irresistible sympathy with the wishes of the gentlemen at the secretary of state's office, when they shewed him the coat, and stood eager for his answer. It is common for a poor man to sympathise with the feelings and wishes of his betters, and more especially when he is in their presence. But the question is, how does this sure conviction

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at the secretary of state's office, as to the identity of the coat, agree with the coyness of his opinion in the court?

But there remains a more extraordinary difficulty arising out of the facts, if they are to be credited, of this man's evidence. Why were not all the hoymen produced to prove that Coigly wore that coat, or at least, a coat like it? Why was not one of them produced? Indeed, I say again, if this story be true, why were not *all* the hoymen produced? There were three, beside the master. In the name of that poor man who suffered on this evidence, for the sake of his mangled character---he is beyond our reach---for the sake of that mangled character, I ask, why was not the evidence of Smith corroborated by the other hoymen?

But the doubt excited by the absence of the hoymen on the trial, accompanies us farther into the matter. Smith states that Coigly and O'Connor went ashore immediately on the arrival of the hoy at Whitstable, and directly to the inn, the Bear and Key, there; and Perkins (the landlord of the inn) says, he saw them arrive at his house, about four in the afternoon. Did Coigly put off his great-coat as soon as he came to Whitstable, and before he went into the inn? Does that appear? No. And it is not likely he should pull it off to carry it on his arm. Then the people of

the inn must have seen this great-coat on his back. Why were none of them called, not even Perkins, to substantiate Smith's evidence? Let these questions be answered, or let Smith's evidence be expunged, while my reader, while the country and posterity decide upon the justice of this poor man's fate.

I do not at present touch upon Perkin's evidence, tending as it does to shew the improbability of the prisoner's possession of the paper, because I wish to see the genuine effect of the stronger part of the crown evidence, standing alone, and unimpeached but by itself. Thomsett's evidence comes to add to this mass of surprising events. He is the person who conveyed the baggage of the several prisoners from Whitstable to Margate; and he says, Coigly told him to take *great care* of a box, and a COAT *that was tied up*, and when they breakfasted (on the road) Coigly ordered him to take the COAT *out of the cart into the parlour*. And he says, *the coat was something like one of the coats before him in the court*. If Coigly was carrying the paper to the government of France, and had deposited it in the pocket of his great-coat, that he should be so uncommonly anxious about the coat is not at all surprising. But the supposition is not to be taken for granted, and then where is the probability of this uncommon care of a great-coat? Indeed, the story has a difficulty either way, not easily

easily disposed of. On the supposition of the paper being a serious paper, and in the pocket of the great-coat, it is matter of astonishment that Coigly should for a moment have put the coat into the custody of the carrier, especially after what had so very recently passed at Whitstable; and if he had no such paper in it, his anxiety about his great-coat is extremely improbable. But after all this anxiety, and Thomsett's perceiving it, and his consequent care of the coat, this witness speaks with great dryness about its identity when he comes into court.-- "It was (in his apprehension) *something like one of the coats* then lying before him on the table."

Would any dispassionate man suppose we were talking of evidence in a trial which affected the prisoner's life? But this is a trial of that kind, from which the law has been anxious, most anxious, to shut out, and for ever to exclude all presumptive evidence, however clear and cogent as such. Then what is this we have been talking of? Does it amount to strong presumptive evidence? Has it the validity even of that of which the law says, *it is too weak in cases of high-treason?*

I admit there remains another proof of the prisoner's possession of the paper, of a nature very different from the vague stories respecting the property of the great-coat and the finding of the paper in its pocket. This is the production of
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certain papers, by the crown-lawyers, purporting to be papers relative to the ordination of Mr. Coigly, accompanied by evidence of their being found in the pocket-book with the treasonable paper. If these papers were Coigly's, and the treasonable paper found in company with them, these facts amount to strong presumptive evidence, I may say very strong presumptive evidence of his possession of the latter paper. But the crown must take this evidence with all its disadvantages. To bring it home to the prisoner, it was necessary to authenticate the papers of ordination, and to shew whose papers they were. I do not now speak of the veracity of Revett, on whose testimony rests every thing that concerns the finding of any of the papers in the coat-pocket, but of the authenticity of these papers, if they were actually found in a coat-pocket belonging to Coigly. What has he to do with those papers? They include no inherent infallible mark of being his. And it is to be observed throughout the whole of this case, that I have a right to examine this trial by the rules of evidence established by this country for its evidence in cases of high-treason, and am not to be bound down by practices fit only for tribunals, in reprobating and abjuring of which we are all in this country unanimous. I grant the papers of ordination contain in themselves strong presumptive proof of their authenticity. But it
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did not the less behove the crown-lawyers to shew by other and extraneous evidence that they belonged to Coigly. Without that, they were not his, in the place where he stood, before a jury of his country. If the rules of evidence imposed upon us by the law be unwisely framed, let the legislature correct them. But as they were not corrected previous to this trial, let each of us enquire for himself if the evidence offered by the crown to criminate Coigly, proceeded according to the letter or the spirit of those rules. What is the language of the crown-lawyers as to this point? It says, "I prove to you that the treasonable paper was found in the pocket of a coat which was found in the room where Coigly was arrested, and that affords a *presumption* that the paper was Coigly's; but I go farther, I raise, by a series of witnesses, a *presumption* that the coat was Coigly's; but I do not rest here, I would make the matter sure, and I prove (by the same evidence that proved the finding of the treasonable paper in the coat-pocket) that the treasonable paper was found in company with papers which from their internal evidence may be *presumed* to be Coigly's, and this I maintain to be *positive* proof of the prisoner's possession of the treasonable paper."

I can make no more of the crown evidence, as far as respects the possession of the paper, than this.

this. If the attorney-general in his speeches, or the judge who presided on the bench and summed up the evidence, have made any thing more of it, I beg the reader to impute my mistake to my dulness, for I protest to him my ingenuity cannot flrew it up to any higher pitch.

Let us pause, and look at the situation of the crown-lawyers at this moment. They had either proved the prisoner's possession of the paper, or they had failed in their proof of that fact. If they had failed, the indictment still opened a road to them to prove by other means that he was the bearer of the advice and information contained in the paper, or any other advice or information, or any kind of assistance to the government of France, in order to stir up an invasion of this country. But as they offered no proof, unconnected with the paper, of such an overt act, we have now a right to say, there was an end to their case the moment they failed to prove the prisoner's possession of the paper.

On the other hand, if the crown-lawyers had made out the prisoner's possession of the treasonable paper, it is not to be taken for granted, that they had *consequently* made any, even the smallest, progress towards a proof of the prisoner's intention in holding the paper. The possession was a lonely fact, when they had proceeded so far as to make it out, but no farther, that did not in itself afford

afford even a presumption of the prisoner's intention. The crown-lawyers had still the entire proof of the traitorous purpose to begin and complete.

But before we proceed to examine the evidence upon which the crown-lawyers at last assumed the fact of the traitorous purpose of Coigly in holding the paper, having previously assumed the fact of his holding it, I have to guard my reader against an error he may very easily fall into. He may suppose that there can be no dispute, as there seemed to be none on the trial, respecting the law of the case. But I have some observations to make on that head, which appear to me to affect every motive and argument on which the attorney-general demanded a verdict of guilty of the jury.

The attorney-general in his reply congratulated himself on the situation in which he then stood as to the law of the case; but I think he was too bold, and mistook his ground. I will quote his words, for there is otherwise no way of doing them justice: "With respect to the law in this case, upon the nature of the overt acts, I think I am entitled to repeat again, what I stated in the outset of this business, that we could have no dispute about it; as to the offence of compassing the king's death, the offence of adhering to the king's enemies, and the offence of inviting those enemies to enter the country; I stated them to be in law of such a nature that it is unquestion-

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able, and for that reason it has not been questioned; when I so express myself, I desire not to be understood to mean that it would have been improperly called in question, if it could have been questioned, but it has not been, and could not be questioned, that if the overt acts of those treasons, as laid, are proved in fact, they are, in point of law, each, and every of them, such overt acts, as will support the charge made upon the statutes, upon which the indictment for those offences proceeds; I do not therefore trouble you with one word more upon the law of the case."

The three different kinds of treason charged in the indictment were accurately enough defined by the attorney-general. No constructive treason, nor any new kind was conjured up by him in a palpable form of treason. So far I am agreed with the attorney-general. But *constructive treason* may be brought home to my door, and inclose me to the peril of my life, in the unsuspected shape of *overt acts* and *evidence* of treason, after the attorney-general and I have agreed on our definition of the treason with which I am charged. There may be such things as *constructive overt acts* of treason, and *constructive evidence* of real overt acts of treason. The crown-lawyers can travel to their object by narrow and indirect paths when the high-road is shut upon them.

Not one of the overt acts stated in the indictment in this trial is an overt act of high-treason in
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itself, and containing in itself the traitorous purpose. The treating for the hire of boats to go to France, the devising the means at Margate of going to France, the custody of the treasonable paper, are all innocent acts, or are offences of a different kind from that of treason, if criminal; and are overt acts of treason only when they proceed from a traitorous purpose, and are proved to be of that nature by evidence foreign to themselves. But suppose those facts to be charged upon me as being committed with a traitorous purpose, and therefore overt acts of treason, and then to be proved against me, and after that the traitorous purpose to be taken for granted as being included in the facts themselves, or *presumed* from other facts, and not *manifestly* proved by facts connected with them and indicating their nature in an incontrovertible way, then, I say, a new treason is palmed upon me, through the means of *constructive overt acts* and *constructive evidence*; and that which is the most detestable part of the injury done me is, that I have the old definition of treason given me, at the outset and close of my trial, by the crown-lawyers.

It is true the attorney-general has two words in the sentence I have quoted, that seem to be a *salvo* against the charge of imposing new treasons upon us in the form of presumptive overt acts or presumptive evidence. He says, “ if the overt acts of those treasons, *as laid*, are proved in fact, they

are, in point of law, each, and every of them, such overt acts as will support the charge made upon the statutes upon which the indictment for these offences proceeds." The words, *as laid*, exclude, I am aware, the presumptive overt acts, because in the indictment the overt act is always laid as being committed with the traitorous purpose, and if it be proved *as laid*, the traitorous purpose is proved. But an indictment is considered as an excrescence by the crown-lawyers the moment the bill is found, and is in the court only to mock the prisoner. And the question in this case is, if the words, "*as laid*," were ever adverted to by the attorney-general, after they had answered their purpose in that sentence? It is vain now to form a wish for the unfortunate man who died upon this indictment, yet I cannot refrain from wishing that those words, from the moment they were spoken by the attorney-general to the end of his reply, had been placed before his eyes, like the handwriting on the wall before *Belshazzar*, to deter him from trampling on their meaning in his subsequent application of the evidence.

There is an ambiguity in the essential part of this quotation, tending directly to mislead the jury: "If (says the attorney-general) the *overt acts* of those treasons, as laid, *are proved in fact*, they are in point of law, each, and every of them, such overt acts as will support the charge made upon the statutes upon which the indictment proceeds."

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The words, "*as laid*," are not explained as they ought to have been by the attorney-general, in such plain and distinct terms that the jury could not afterwards mistake his subsequent proposition, *that the overt acts in the indictment, if proved in fact, are in point of law, such overt acts as will support the charge.* The manner in which those overt acts are laid, *and were obliged to be laid* (no thanks to the attorney-general) *to give a legal existence to the indictment*, is with the traitorous purpose inseparably annexed. To prove them therefore, *as laid*, is to *accompany the proof of the facts that constitute the overt acts with the proof of the fact of the traitorous purpose.* But the ordinary usage of language would easily very easily mislead the jury into a conclusion that the proposition of the attorney-general was, that the bare and simple acts stated in the indictment as overt acts of treason were, if their existence were proved, such overt acts as would support the charge, that is, would *in themselves* prove the crime of treason. When the attorney-general stated that certain overt acts, if proved in fact, would have the effect which he maintains, was it not to be expected that unlettered men would understand his meaning to be, "if those *simple facts* be made out, my conclusion follows, and the intention is a legal inference that I have a right to state to you as being made out by the proof of the facts?"---What was the source of this ambiguity, I do not presume to say. But the
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ambiguity is there, and made part of the danger, and perhaps part of the mischief of this case.

But this is only an inferior instance of the mode of insinuating new treasons, in the form of *presumptions slipped into the re-statement of overt acts and recapitulation of evidence*. The whole reasoning of the attorney-general in his reply, is a mass that consists of nothing beside these presumptions, if we take away some barren propositions of law, expressed in very slovenly and ambiguous language. We have seen the attorney-general's statement and exposition of the law of overt acts, which I think is sufficiently ambiguous; and perhaps the statement of the principles of evidence contained in the following extract from his reply, if taken with his subsequent neglect of those principles, of which I shall completely convict him, will shew what I mean by the *barrenness* of his propositions of law, and may also add something to the proof his ambiguity.

“ Gentlemen (he says) having stated to you the nature of the indictment, and having troubled you for the present with these short observations upon the defence which has been made by the evidence on the part of the prisoners, you will allow me here to apply myself for a moment to consider those principles of evidence, which my learned friends have, each and every of them, insisted upon, as being those which are to govern your minds, when you come to apply the facts of this case to the law of the country; and I am extremely ready to
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state with them, in the broadest terms, that your consciences must be perfectly satisfied by cogent evidence, and satisfied too by that species of formal evidence which the law of the country requires to be given in this kind of case, that the defendants are guilty of what is imputed them, before you can convict. Gentlemen, I am confident that no man in this country would dare to ask you to convict them upon any evidence, short of that which does fully satisfy your consciences; and here I take the opportunity to beseech of you, on behalf of the country, and on behalf of the prisoners who are part of the country, in whose fate the country is deeply interested, that your verdict should be according to the evidence, that you will now address yourselves to consider the whole of the evidence which has been given, and that you will now most anxiously endeavour to execute the duty which you have solemnly imposed upon yourselves, by the oath which you have taken, to make a true deliverance between the king and the prisoners at the bar. Gentlemen, I go as far as any man in beseeching you, by every consideration that can be pressed home to your consciences, that if any means whatsoever have been taken to create any prejudices, you will be pleased to recollect, that in my humble judgment, there is not a man among you who is qualified to execute that duty which the law imposes upon you, who
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has ventured to form an opinion upon this evidence, till the very moment that you have heard the whole of it, and the whole that is said upon it. Having heard the whole, you should then conscientiously review the whole; and I trust, I am addressing myself to twelve men, none of whom have formed their opinion, declared their opinion, or stated their opinion, even at this instant."

I record these words against the attorney-general, and I wish they could reach every jury that is hereafter to sit upon a question of life or death, in which he is to address them; for, his appeal to the rectitude of the jury is never to be forgotten by jurors who in any time to come shall sit upon his indictments, whatever disregard of it may be found in his arguments or conduct.

But as these words are connected with my present subject, I ask, what is this exposition of the principles of evidence? "Your consciences (he says) must be perfectly satisfied by *cogent evidence*, and satisfied too by that species of *formal evidence* which the law of the country requires to be given in this kind of case, that the defendants are guilty of what is imputed to them, before you can convict."

We have words here that will include, *when they are explained*, the species of evidence demanded by the law in this case. But what are they without such explanation? Why did not the attorney-general give the jury his notion of *cogent* and *formal* evidence, to accompany this exposition of the principles

principles of evidence? What would be cogent with one man would be contemptible with another; and what would be formal in the eyes of an unlettered jury would be informal in the sense and spirit of the law. The attorney-general will say, the words had already been explained by those gentlemen whose duty it was to explain them. But I will tell him, it was also his duty to illustrate them, when he was stating this most important proposition, by plain, explicit, intelligible terms. And this was not merely a duty laid upon him by the sacred trust reposed in him by his office of public accuser, but one which he expressly assumed and adopted in declarations almost immediately preceding this ambiguous barren exposition of the principles of evidence.

What, in fact, would an attorney-general do, if his wish were to impose false principles of evidence upon a jury? Would he plainly state his false principles, and maintain them as principles of law? No, certainly! If he knew something of the human mind, he would not even insinuate them in words; but having stated the true principles of evidence in general, ambiguous, unimpressive words, he would apply his false principles at every step to every particle of his evidence. We have seen the attorney-general commence this career, we have still to see how it is to be finished by him.

But what the attorney-general would not do it becomes us to do, and that is, to accompany

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every part of the evidence with a retrospect to the principles of evidence. And it is the more necessary at every step we now take, because the intention in holding the paper, supposing the fact of the custody of it to be proved, is the soul of the charge, and because proof of intention is of a very subtle nature, if we depart from what may be called the facts of intention. *Legal proof* of that which in ordinary language is called *matter of fact* is such as makes it manifest to every understanding, if the witnesses be credited; and *legal proof* of the *intention* is such as makes out the design of the agent as manifestly and *consequently*, if the facts be believed.

When we come to look for the evidence of the *traitorous purpose*, the crown-lawyers disappear. They were as active as the sharpest motives could make men on any occasion, when they produced their evidence of the prisoner's possession of the paper. Why, then, do they recede when they come to the *proof that makes the whole of their case*? I see but two reasons, to account for the bustle of the former part, and the stillness and apparent reserve of the latter. I can suppose, they perceived that the proof of the possession was not only the most feasible part of the story, but that it would have to stand almost alone to make out the traitorous purpose. Then, both their activity and their subsequent calm is understood. Defective in the proof of the traitorous purpose, in-

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which would lead them to put the change upon the jury, and make the proof of the possession evidence of every part of the charge.

It is, however, a very extraordinary circumstance, and, considering how the most defective of cases steal into the place of precedents, a very alarming circumstance, that not *one scrap* of *direct proof* of the traitorous purpose is to be found in the whole body of the evidence. I am persuaded that no man of plain understanding and upright thoughts on the subject knows where to look for *any proof* of the intention after he has attentively perused the whole of the crown-evidence. All that I have discovered, in searching for it every where to discuss its merits, I have found in the attorney-general's reply and the judge's summing up, in neither of which places ought it ever to have been found, if not legible beforehand in the body of the evidence. But this proof, illegitimate and alien as it is, I am willing to take as proof whose intrinsic merit may be cast into the scale of the prosecution.

The proof of the traitorous purpose which I find most closely urged by the attorney-general is the possession of the paper, taken with its internal evidence of its origin and destination. I am really putting the argument of the attorney-general too strongly, for he relies very confidently on the simple fact of the possession of the paper, and that sometimes in opposition to its internal evidence of

every kind. " Gentlemen (he says in his reply) *if that paper was in his possession*, surely I should be thought to waste the time of a British jury, *if I was to follow my learned friend through the great variety of observations which he made upon the contents of it.*" Here the possession of the paper is insisted upon as proof of so cogent a nature, as even to supercede all necessity of commenting on its contents. In another part, farther on in the reply, the attorney-general says: " If it does exist (speaking of the secret committee) then O'Coigly having the paper, addressed from that committee to the Executive Directory of France, and meant to be delivered to them, *in his possession*, he knowing the contents of it, is unquestionably guilty of an overt act of high-treason." Here the attorney-general qualifies his former proposition with the condition of the prisoner's knowledge of the contents of the paper; but as to that, I shall be able to meet his assertions in every shape, whether they be more or less presuming. Then, to regard the spirit of this last passage, it maintains that the fact of the possession of the treasonable paper, accompanied with the knowledge of its contents, is an overt act of treason; for the words "and meant to be delivered to them," do not qualify the possession with that condition, that the *possessor of the paper* meant to deliver it, but plainly refer to the *designs of the committee.*

One is surprized to meet with such ignorance of human affairs as is betrayed in this proposition,
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even when it is taken as qualified in the second passage I have quoted. If we were to lay aside the severity of the rules of legal evidence, and try this case as a speculative question in the closet, we should not be authorized to presume even the *coldest approbation* of a paper from the possession. It is a thing that happens to every man that has concerns with political life or literature, to have papers given to him which he puts into his pocket and never thinks of again. It happens even when not only the writer is disagreeable to the person to whom the paper is delivered, but when the sentiments of the very paper is discountenanced by him. We do not choose rudely to repel every projector who comes importunately to us with a paper, accompanied with propositions suitable to its contents. We have no way left but to take the paper, and either to destroy it afterward, or, which is a more usual thing, to let it remain neglected, with other papers for which, as for it, we have no manner of interest or affection. This is very natural conduct, though it may not be very correct. The attention we pay by habit to the feelings of others, even of those we dislike, if it be not an excuse for its insincerity, accounts for its prevalence. I am sure there is no man who has any acquaintance with the world, who does not know the frequency of this kind of possession of papers, unconnected with the possessor's designs, and often in opposition to his opinions.

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Does the serious nature of a paper deter people from taking it in the way I have been stating? Some men it will deter, no doubt; but not all. Many of my readers will bear witness that they have had dangerous papers, in this manner, in their possession. I do not speak of treasonable papers (for as to the paper in question, it must form an exception of a very particular kind, if it were written as it purports to be written) but of such papers as are rendered dangerous by the temporary spirit and politics of the government. Brave and generous men do not nicely weigh how much danger they incur by innocent or indifferent actions, which derive all their danger from foreign circumstances whose source and authority they are accustomed to despise.

So much for the doctrine (even in a loose question of the ordinary character of an action) that the possession of a paper is or can be evidence of the holder's approbation of its contents, or of his intention respecting its application.

But let us come to the severer task which was imposed upon the attorney-general, of making out this doctrine to be such legal matter as it became him to offer to a jury in a capital case.

The attorney-general, sometimes stating the proposition in one way, sometimes in another, connects it at length with the *internal* evidence of the origin and destination of the paper. "It is a paper (he says) addressed from the Secret Committee

mittee of England to the Executive Directory of France; it purports upon the face of it, therefore, to be a paper to be delivered to the Executive Directory of France." And the judge, in summing up, takes the same view of the subject, only he expresses the inference of the intention from the possession more plainly, for he says---"The direction was, 'The Secret Committee of England to the Executive Directory of France.' Had he (the judge is speaking of Coigly) got the letter in his custody, without knowing where he was to carry it? Is it possible a man could have such a letter and not know the address, or to whom he was to convey it?" Throughout the whole of the attorney-general's argument, the possession of the paper, accompanied with a knowledge of its contents, is supposed *necessarily* to include an approbation of its contents. And the judge pushes the argument farther, for he expressly includes the knowledge of the contents in the fact of the possession.---"Is it possible (he says) a man could have such a letter and not know the address, or to whom he was to convey it?" There is something so inherently absurd in the more decent of these two propositions, that it is almost impossible to preserve its answer from appearing ridiculous for its simplicity. No one will say that Revett's having the custody of the paper in question with a knowledge of its contents, till he should deliver it up to proper persons in the course of his duty, was an overt
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act of treason. It will be said, that is an extreme case, and the case explains itself. But I answer, no. The possession cannot explain itself. The explanation is, that Revett is an officer of justice, who having seized the paper is carrying it to a magistrate. But that explanation, if Revett were dragged before a jury who knew nothing of him or his office, would not appear without evidence foreign to the paper. The possession of the paper (accompanied, we will suppose, with a knowledge of its contents) is, in Revett's case, and in every other, an unmeaning fact, till it be explained by other evidence.

To make the prisoner's possession of the paper *any part of a series of proofs* of his intention to convey it to the government of France, *which was all it could be made,* it was necessary to shew by some external evidence that the paper itself was a *genuine instrument*, and that its *sentiments and spirit* were the *prisoner's*, either directly or by adoption from others. This would be necessary if the possession were the plainest fact ever made out against a prisoner; but in this case, where the evidence of the possession leaves us full of doubt, the proof of the reality of the paper as a serious instrument of treasonable purposes and the proof of the fact of the prisoner's entertaining those treasonable purposes are things which cannot be evaded by the crown-lawyers, without exciting a suspicion of the whole charge being an unfounded and wicked accusation.

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There is no occasion to look into every possible event that might have furnished proof to this effect. The natural way at present is, to look at the indictment, because the crown-lawyers knew the kind of story they had to tell when they drew up the indictment, and into that we may fairly look for its outline.

When we turn to the indictment, we find a simple and intelligible story. The prisoner compassed the king's death, and adhered to the king's enemies, and compassed to invite a foreign enemy to invade this kingdom; and to effect one or all of these purposes, *the prisoner conspired with others to raise rebellion in this kingdom, and procured and obtained the paper in question, and concealed and kept it in his custody with intent to convey it to the government of France.*

When we come to the evidence we ought to find a story corresponding with this in simplicity and clearness. What then is it? Do we find the evidence which makes the custody of the paper an intelligible fact? Do we find evidence of the *conspiracy, or of the procuring and obtaining of the paper?* Not a *fragment!* And here our confusion is complete. When we are asked by the crown-lawyers to assent to this proposition---“The prisoner's possession of the paper (inasmuch as you see that it is addressed from the Secret Committee of England to the Executive Directory of France) proves him

to be the bearer of it to the government of France"---we answer, "No; we did not distinctly perceive the fact of the possession, but if we grant you that, you have not given any character to the possession." If the same proposition were followed up with evidence of the conspiracy, and the procuring and obtaining of the paper, as laid in the indictment, we should involuntarily answer, "Yes; we see a palpable character in the possession, we see the deed that makes it the prisoner's, in the guilty sense of the word."

I know the crown-lawyers will say, they were not bound to prove all the overt acts of the indictment, it was enough if the traitorous purpose were made out by some or one of them. Very well! But I expect to find a plain story in the evidence, unfolded in some way chalked out in the indictment. Every thing talked of in the indictment is resolved at last (by the course of the crown-lawyers) into *the nature and character of the prisoner's possession* of the treasonable paper. Then, what road does the evidence take to explain that? The indictment had chalked out one of the plainest that could be devised---*the conspiracy, and the procuring and obtaining of the paper*. The crown-lawyers knew their own story when they pointed out *this plain direct road to the character of the possession*. Did they take it? Where is the conspiracy? - *Not in the evidence*. Where is the procuring

curing and obtaining of the paper? We may successfully look for that, as for the conspiracy, in every other part of the proceedings of the crown-lawyers, *but not in the evidence.* In the evidence we see nothing of the reality, of the paper as an instrument of treason, nothing of the manner of its coming into the prisoner's possession. Up to this point, at least, we find nothing in the evidence but a confused account of the prisoner's possession of the paper (taking every word of the evidence to that effect as proceeding from honest witnesses) and from this *half-proved* possession we are to infer, according to the attorney-general's doctrine of the possession, the remaining and *essential* part of the story--*the traitorous purpose.*

In the assertions and inferences of the attorney-general on this topic, we have a happy example (I mean a perfect one) of his method of reasoning. In his brief, taken from his own indictment, he finds the facts of the *conspiracy*, and the *procuring and obtaining of the treasonable paper*, which make a good figure in the story, and without which indeed it is an unmeaning collection of facts. But when he comes to his evidence, not a word appears concerning those strong circumstances. Then how does he conduct himself as to those facts, when he comes to his reply?--“*He leaves them out there also!*” will be answered by every man who has any feeling and conscience. But this is not the attorney-general's mode. He still argues obstinately

from his brief, and avails himself of his last address to the jury to clear up his blurred case, by solemnly and laboriously restoring all its obliterated parts. "This paper (he says in his reply) is in its nature *a credential* of the man who carries it. It is a paper which, if conveyed by any man, and received from that man by the Executive Directory of France, would establish to the Executive Directory of France; that that man without the aid of other papers, with the aid only of the intelligence and information that could be conveyed by by him in conversation, might be received, as able to make representations *for others*, upon the subject to which it relates. It would inform the Executive Directory that he was *a person who came accredited by that secret committee, or that body of men who were supposed to speak their sentiments in that paper, and that he was a person with whom they might communicate with confidence upon the subjects contained in that paper.*"

The proof of the traitorous purpose which, after the circumstance of the possession, appears to be most strongly pressed upon the jury by the attorney-general and the judge, is the fact of Coigly's having been in France and other foreign parts. The attorney-general in his reply says, "You have had evidence laid before you, which, being uncontradicted, I apprehend I have a right to state to be complete, that O'Coigly appears to have been in France, by the passport which has been produced, which is proved to have upon it his own
name,

name, in his own hand-writing, and in Holland and in Flanders." --" He has not at all accounted for the fact of his having been in France ; he has not at all accounted for the fact of his being in Holland ; he has not at all accounted for the fact of his having been in Flanders." And the Judge in his summing up says, " The next place we hear of him in, is Holland ; then he went to France : we hear of him at Paris."---" The journey and the dates are proved by a passport, and found in a way which admits of no doubt as to him, because it not only describes him by name, and where going from place to place, but there is his hand-writing upon it."---" The next thing is, what are the contents of that letter ? ' The citizen who now presents this to you, and who was the bearer of our sentiments before : ' sending it by the prisoner, if he were the person who had been in the course of carrying communications from England to France, makes it still stronger against him. Is that true ? Does he appear to have been in the course of carrying correspondence before ? The fact is allowed that he had been a great traveller into foreign parts ; the passport proves that, and this also stands without contradiction whatever ; and he has travelled, they tell you, from place to place, within a very small distance of time, and none of these journies are accounted for*."

* These quotations are from different parts of the summing up.—See Gurney's Report of the Trial,

It is not possible, I believe, to encounter any thing more disgusting than the meaning and spirit of these passages. But we must repress our feelings and go on. The prisoner has been in France and Holland and Flanders, or, as the judge phrases it, he has been a great traveller into foreign parts. Well! is that treason?---No; but it is a proof of the traitorous purpose.---How?---The treasonable paper contains these words: “*The citizen who now presents this to you, and who was the bearer of our sentiments before;*” and the prisoner has been in Holland, Flanders, and France, and has not accounted for that; who, therefore, could that bearer of their former sentiments be but the prisoner?

I treat this reasoning with such contempt, that I am careless about the fact on which it is founded, and am willing to admit that Coigly had been in France. But it is worthy our attention, as making part of the character of this trial, to see how this fact is made out on which is built an argument of such a complexion! “The fact is allowed (says the judge) that he has been a great traveller into foreign parts; *the passport proves that.*” But how is this passport, on which is built this travelling story, made out to be Coigly’s? Is it found upon his person? No. In any part of his luggage? No. It is found in a trunk which the crown-lawyers *attempted to prove to be the property of John Binns.* They did not prove the trunk to be

be any person's property on earth ; and if the passport had been found in the attorney general's trunk, the presumption of its being Coigly's would have been as good as in this story of Binns's trunk as far as that went ! But the crown-lawyers will say they went a step farther. I acknowledge it ; they did so ; they put it upon evidence that ought to have been struck out of the judge's notes*. They put it upon the evidence of a *spy* of the government, who disgraced himself and his evidence in court. The passport had the name of James Coigly written on it purported to be written by the bearer of the passport, and Mr. Frederick Dutton swore the hand-writing of the words James Coigly to be the prisoner's. Let us hear Mr. Dutton's own account of himself, as given on his cross-examination.---He had never been a *footman*, but had been in the *capacity of a servant and worn a livery* ; he had been in the service of five masters ; he had been dismissed the service of one of those on a charge of theft, and had lodged a *criminal charge against another* : he had been a *witness* against "one Kayne, a man who was executed, and against one Lowry, at the last Downpatrick assize ;" he was not in the capacity of a servant when he *first became a witness*, he had ceased to be so a *few months* ; he had never applied (he said in answer to questions of Mr.

* Allowing the practice of judges striking out, at their pleasure, parts of their minutes of evidence, to be legal.

Plumer) *“to be rewarded for his evidence in Ireland; he had not applied to Mr. Cook the secretary of state, nor to the government, nor to Lord Carhampton, nor to any body, for a quartermaster’s warrant;”* but (questioned a little farther) *he had written to Lord Carhampton about a quartermaster’s warrant which had been promised to him, and which he got, having then the warrant in his pocket, and this application (in consequence of a promise already given to him) was after his first examination as a witness; he had bought stolen plate of a man, with an intention of informing against him and convicting him, yet took an oath of secrecy to the man, after which he laid an information against him and was evidence against him, and as to this transaction excused himself by stating that he took the oath of secrecy on a book entitled “Reading made Easy.”*

Thus far the counsel for the prisoner proceeded in getting into the character of this man, from his own account of himself; but when they would have gone farther, and were proceeding to shew, still by his own account of himself, that he was not only a common informer, but “a man of so infamous a character, that both his informations and his evidence in a court of justice had been rejected on that very account,” then the man is protected by the court, and the scrutiny into his character goes no farther. Without questioning in this place the propriety of that practice which steps between the prisoner

soner and a hired witness, when the former is on the point of proving the latter an infamous character, for the express purpose of skreening a wicked man from the discredit due to him, and (as it inevitably happens in its consequence) for the purpose of laying before the jury evidence for the crown proceeding from a notoriously false mouth, and which is afterwards argued upon as evidence both by the crown-lawyers and the judge---without discussing that, I ask what is the case here? The counsel for the prisoner having got so far as to ask Mr. Dutton this question, "How many informations may you have laid in Ireland, in the course of the three or four last years?" receives this answer---"*I could not say, upon my oath exactly; but I really do not think I ever lodged ten *!*" Lodging criminal informations against men (some affecting their lives) is not so light a thing (although Mr. Dutton confessedly thinks *ten* a small number) as to be forgotten in any instance by the person employing himself in that way, except he had actually lodged so many as to have lost all account; so that Mr. Dutton must be taken either as a man who was answering the question *falsely, upon his oath*, or as one having such large transactions in the way of lodging informations, as not distinctly to remember their number, and therefore as a very

* For the quotations, and the whole of the statements relative to Mr. Dutton, see Gurney's Report of the Trial.

hacked spy of the government. But there was no occasion to press him to choose between the evils of this embarrassing alternative. Mr. Dutton's account of himself, as far as the bench would suffer us to get directly into it, is enough. Mr. Dutton is a man raised by the government of Ireland from the station of a common footman to the rank of quarter-master in the army in this way--- after he had been a footman to several gentlemen, and was turned out of one service on a charge of theft, he suddenly ceases to be a servant and hangs a man by his information and evidence, and then reminds a nobleman, who is a dependent of the government, that he had a quarter-master's place promised him, and receives the quarter-master's warrant. And it is not to be forgotten, that this man, in telling this story, denied several of the facts first, although he reluctantly owned them afterward; and, indeed, denied his application for the quarter-master's warrant till a draught of his letter to Lord Carhampton on the subject, in his own hand-writing, was produced against him. On the evidence of this man then, of this spy, thus personally disgraced by himself, on evidence thus discredited by the witness himself, rests the fact of Coigly's travelling into foreign parts; and on this fact thus founded, the attorney-general and the judge unhesitatingly raise a proof of a traitorous purpose in his possession of the paper!

But the crown-lawyers, by the mouth of Mr.
 Garrow,

Garrow, expresses astonishment and indignation to hear it "stated as a ground of imputation to a witness that he is one of those persons who are *ignominiously* called *spies*!" And, through the same mouth-piece, they give the polite appellation to such persons of "*gentlemen who have been instrumental in advancing the public justice of the country.*" Mr. Garrow is not a dull man, but he is a bold one, and we must not rely upon him for an exposition of the law of the land. In this case, he overlooked a very plain distinction between *the justice of the country*, and *the cause of the minister*. It may be a true proposition that spies are *useful* and *necessary* to the latter. In the affairs of government, as in all other affairs, when they come to be managed by a succession of temporary expedients, the most desperate expedient (and the *most impolitic, taken in itself*) may be useful and even inevitable in its turn; and at length spies may become necessary to the existence of a government. What then? It is to be hoped, *the justice of the country is a thing of a more stable nature*. The minister may impose upon us, in its name, something that may answer the description given by Mr. Garrow, including in it as a necessary ingredient the ministry of spies. But the JUSTICE OF THE COUNTRY *disclaims them*! The LAW demands *credible* witnesses. And a SPY, *to be such*, is a man who has fallen so low as to lose all scrupulous feeling, and therefore till the nature of things

be altered cannot be that credible witness the law demands.

A spy is a creature hired by the government, with immediate rewards and larger prospects, to watch the proceedings of a man obnoxious to his employers, in order to deliver him over to the penalties of the law, *the infliction of which is the signal of his advancement.* This is the most favourable point at which the remnant of his feeling and the absence of all extraordinary temptation can stop him. But we cannot trust to circumstances that they will not tempt him, nor to his feeling when he has proceeded so far that he will not be tempted, to go on. If it be in the pursuit of blood that he is employed, he will have so many vices to practise, that it is utterly incredible he should preserve feeling to arrest him in any part of the career leading to murder, when that should become necessary to his views. It is seldom in human habits to sin deeply, and at length to throw away the price of guilt for a qualm about the little more that may be required. The spy who is in the pursuit of blood must practise so closely upon his victim, as first to destroy all his compassion for him, and next to beget a hatred of him; and then, unchecked by humanity, and goaded by malice and motives of rapine, I ask where it is probable he will stop? and where the credibility is in any case of his evidence? I know this is a supposition of so much guilt, as to be resisted by the common interest we all have in our courts of justice. But I am not
talking

talking of any fact that has happened in any trial, but of the nature of the system which brings a spy into a court to be evidence in a capital case. There is no corrective in the system to prevent the evil, and if it has not yet proceeded to this last degree of infection, it is because the administration in adopting the system have not also adopted a system of judicial murder ; but let them beware that in preparing men for the worst, which they do, they do not go farther than they wish, and make them the instruments of crimes they do not contemplate.

There are men, however, of whom we expect such language as this of Mr. Garrow, and there may be times in which we shall have no reason to look up to the bench for its protection against such maxims. But though the crown-lawyers may never forget what they are earning from an administration, nor judges what they owe to it, yet the JUSTICE OF THE COUNTRY has a safeguard in A JURY OF THE COUNTRY, and woe be to the jurymen who, betraying his trust, takes his eye from the LAW, which demands a *credible* witness, to look at maxims engendered in the offices of administration, and spawned in courts of justice by the influence of unworthy judges !

And, in despite of Mr. Garrow's defence of Mr. Dutton, I maintain this to be a bad symptom of the character of a trial for high-treason, that we have seriously and eagerly proffered to us a frivolous story of the prisoner's travelling into foreign

reign parts, founded entirely on the evidence of such a man as Mr. Dutton, as a proof of the traitorous purpose.

But the prisoner was going to France with this paper addressed to the Directory in his possession, and that is another proof of the traitorous purpose. I grant he was going to France, and (for the present purpose) I grant with the paper in his possession. To this apparent coincidence of events, I will add that of his having been in France before, and the bearer of the paper being described as the bearer of a former paper to the same quarter, granting all that is not proved of these facts.--- No person who is able to understand what is passing round him, will finally conclude on the character of these events farther than to say, "They are events of which at present we want the clue, and which, of course, contain no evidence of the prisoner's guilt or innocence." But here we may see the source of the mistake of all those who were honest in their outcries against the prisoner. Struck with this apparent coincidence, they overlooked the real chasm between every event of the story made out by the crown and all its other events, and the consequential want of consistency and truth in the whole, which is its distinguishing character.

Have the crown-lawyers any thing more, to eke out this ugly heap of broken materials? - Yes; the prisoner's denial of the great-coat; the contradiction

tradition between his account of himself on his examination and facts that appeared on his trial; and the want of explanation of some circumstances on his part.

When I talk of the great-coat, I cannot forget that Smith's evidence, by which the property is proved, appears without foundation as long as it is unsupported by the other hoymen; but it saves time to permit an antagonist to presume a fact when he gets no farther by the concession. The eagerness and singularity with which the question was put at Margate, as to the property of the coat, *after it had been out of the prisoner's possession*, does not leave the mind of a bye-stander assured of the purity of the motives of those who put the question, and it was natural for the prisoner to deny the coat when questioned in that suspicious manner, if he and the other prisoners had not before denied the baggage generally. This is not a place to talk by *etiquette*; and of the Bow-street officers, it is to be said that no man whose life is at stake would depend on their honesty. I am sure the attorney-general would not. Then, the prisoner's denial of the coat was as natural in the case of his innocence as that of his guilt. I should leave this silly presumption without another word, for indeed, I am weary of combatting so many nothings, but for the temper I find in the comments of the attorney-general and the judge on this point. The attorney-general says, "He
has

has the coat in the room with him, the pocket-book in the room with him, and you see the means of defence he has upon his person, the instrument which I now hold in my hand! (shewing the dagger taken from the prisoner)---this pocket-book is seized; he refuses to give any account of himself." Oh God! that a man, seeing the prisoner resign himself without even a remonstrance to the arrest and search of his person, seeing him sit calmly down to his breakfast instantly afterward, and conducting himself temperately through every part of the transaction, should harden his mind to such a temper as daringly in the face of the jury, with the same things before their eyes, to make this comment on the mere fact of the prisoner's possession of a dagger, unused at the very time of its being wanted on the attorney-general's supposition, does raise my astonishment, much as I know of the profligacy of venal times!--But let us turn to something better, for such is the comment of the judge. He says, "Before the secretary of state he (*the prisoner*) denies that he had any great-coat. The fact that he had one is proved beyond all possibility of contradiction*. Can you suggest to yourselves any reason why he should deny he had any great-coat, if there was not something in that great-coat which he did not choose to have fixed

* By one witness (*Smith*) and that not *positively*, supposing his evidence to be true,

upon

upon him? I cannot suggest any other reason; and if there is no other reason for it, that becomes most important and material evidence." There was a *very strong* and a *very obvious* reason in Revett's suspicious proclamation of the importance of the coat; and when the judge overlooked this reason, undoubtedly he overlooked *very very material matter in the prisoner's favour*, which it was his office to point out to the jury, and put in its place comments which would not have been correct had there not been (as there was) in the evidence an inherent and obvious explanation of the prisoner's denial of the coat consistent with his innocence.

The prisoner's denial of the coat, supposing it to be his, and his subsequent language on his examination which stood contradicted by evidence on the trial, supposing such language ever to have been held, afford very slight presumptions of guilt, if they afford any. Examinations before the privy-council in a case of high-treason, are dangerous things for a jury to take as evidence. Questions are asked, by men practised in subtlety *, mingling facts that are

* The crown-lawyers affect to call this an examination before the secretary of state; but most of the members of the privy-council were present at Coigly's examination, and were the EXAMINORS; and there is great difference between the chance of being entangled, innocent or guilty, by the Duke of Portland, and that of being entangled by a board half filled with men nursed in the lap of the law.

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true

true and innocent, with others true and equivocal in their nature though not treasonable, and others again true and innocent in themselves and in the prisoner's apprehension, but overt acts of treason in connection with plans which are ascribed to the prisoner. In such a case if a man answer (*and humanity forbid that any man, however innocent, may ever again do so while that INQUISITION lasts!*) it is not possible for him, by truth or falsehood, to extricate himself from proof which the attorney-general will lay before a jury as confidently as that which he inferred from Coigley's examination. Suppose, in the present instance, the coat and the paper were the prisoner's, and he had acknowledged the property of both before the privy-council, then the attorney-general would have produced his own confession to prove his guilt. And yet, he might have been innocent! It is no matter whether the prisoner were innocent or guilty, as to this argument. If there could be a case in which he could have the custody of that paper without an intention of conveying it to the government of France, my argument is perfect, and the prisoner's denial of the coat, or any other language held by him in his examination before the privy-council, however vehemently urged as proof, ought to have weighed very little, and indeed I am persuaded ought not to have weighed at all in the decision of his fate.

The remaining proof of the traitorous purpose is
found

found in the prisoner's defect in not explaining a great variety of actions imputed to him, all of them innocent in themselves, and each of them absolutely unconnected with every other, for any thing that appears to the contrary in the evidence. The doctrine from which this proof is derived is this foolish, illegal, and hardy proposition, that a prisoner is to be accounted guilty who does not explain every fact which an attorney-general chooses to make matter of proof against him, countenanced with loose evidence from hired agents of the government in defect of other evidence, and which can by any of the means that lie within the range of possibility be brought into connection with the charge. This is certainly a proposition so monstrous that one suspects some oversight in expressing it, the moment it is on the paper. Nevertheless, this is the attorney-general's proposition; and, such is the effect of facts artfully put together in evidence, and more artfully connected by comments and supplementary matter in a crown-lawyer's reply, that I believe the attorney-general owed the verdict of guilty against this in every way unfortunate man, to the skilful application of that doctrine. The attorney-general and the judge expressly objected to the prisoner as proof of his guilt, that he had not explained his travelling into foreign parts; his return to Ireland, and his connection and correspondence with Lord Edward Fitzgerald, *of whom the jury knew nothing*; his acquaintance with Mr. O'Connor,

Mr. Binns, Mr. Allen, and (that honest worthy lad, the servant of Mr. O'Connor) Leary; his possession of the treasonable paper; the address of the paper; his being at Manchester; his assuming different names, and filling the characters of priest, captain, and merchant; his quitting Ireland; and his present journey to France*. In the end we find all these circumstances harmless as they appeared in evidence, if every word of the evidence were true; but here we see the attorney-general's doctrine, and a long example of it, at once. All the travelling story rested upon a prevaricating spy (*Mr. Dutton*) for its existence; and the attorney-general might have formed (it cannot be doubted if we remember what spies are) as good proof of a great many more stories equally requiring explanation. But if a thousand of such stories had been told in this loose way, the prisoner was to explain them all at the peril of his life! There is no depravity that is not ashamed of the doctrine when it is plainly expressed; and certainly no innocence could escape from it if it were fully acted upon. An attorney-general has the treasury of the state as a fund to procure witnesses against a prisoner, and may ransack the earth to bring such as are honest, or to hire such as are false. If, therefore, he should be

* See Gurney's Report of the Trial, pages 486-7, for the attorney-general's observations on this subject, and pages 523-4, for the judge's observations.

tempted to destroy a prisoner, and the scene of the alledged treason were not wide enough, he has only to extend it till no common fortune can collect witnesses to explain all the real and supposed facts of the case. But without talking of an attorney-general that may be venal and base enough to do this, in the present case we see the effect of the doctrine. The prisoner is called upon to account for transactions in parts of the world at a great distance from each other; and failing to satisfy the attorney-general and the judge on this topic, the defect is so steadily and so confidently argued by them as proof of the crime, that again I say, the verdict of guilty is in my opinion to be attributed to this argument. And the doctrine is *illegal*! It changes the character of our criminal law, bereaving it of that quality which all intelligent and benevolent men have admired and loved. The English law humanely says, an accused person shall not be compelled to criminate himself. But this merciful provision was withheld from the unfortunate Coigly. The attorney-general and the judge in that argument said---The prisoner has been compelled to criminate himself; to prove his own guilt---the traitorous purpose could not be made out against him by the direct evidence of the crown, but facts *connected with his crime, and in default of explanation proving his guilt*, have been made out against him, and *he has not explained them*!---In opposition to this cruel language, let

us hear *the voice of the law*, in the mouth of a judge who revered its principles. Lord Nottingham in the trial of Lord Cornwallis addressed the peers, who were the judges, in this just and honourable manner---“ I know your lordships will weigh the fact with all its circumstances from which it is to receive its proper doom. Your lordships are too just to let pity make an abatement for the crime, and too wise to suffer rhetoric to make any improvement of it. This only will be necessary to be observed by your lordships, that *the fouler the crime is, the clearer and plainer ought the proof of it to be*. There is no other good reason can be given why the law refuses to allow the prisoner at the bar counsel in matter of fact, when life is concerned, but only this, *because the evidence by which he is condemned ought to be so very evident and so plain, that all the counsel in the world should not be able to answer it**.” The practice of the law at first was, to deny a prisoner the aid of counsel *in matter of fact*. And why? Was the law more cruel than it is now? Oh no! It demanded of the crown-lawyers to make such a case as *no explanation could affect*. But when the practice of the law granted counsel to the accused, did it mean to convert its mercy into cruelty, by imposing this doctrine of explanation upon him? No! The law humanely

* Mr. Plumer very anxiously urged this quotation upon the attention of the jury.

added to his security, by allowing him to explain when he could repel the charge by doing so, but still not only permitting him, but calling upon him, to be silent when he could not explain but at the hazard of criminating himself. And I must do the justice to one of the prisoner's counsel to say of him, that he had warned the jury of falling into that error of demanding an explanation of any fact from the prisoner. Mr. Plumer very pathetically and very correctly said, " I am not on the part of the prisoner, charged with so heavy a crime, bound to explain at all. I have a right to maintain a full silence ; to say for him---I am not guilty ; it remains for you the prosecutor, to prove me so."

I find one more proof of the traitorous purpose, which, had it appeared in the evidence, would have removed the dark cloud that hangs over this trial. This proof is no less a fact than that the prisoner was the *IRISH DELEGATE alluded to in the treasonable paper, as sitting in the committee when the paper was drawn up.* Every tongue will be impatient to ask, where does this proof appear? and in what shape? I answer in the judge's summing up ; and as to its shape, let it stand forward for itself. When the judge had done with Coigly's case *in a direct form*, in speaking of that of O'Connor, he says, " I think also that you may take it to be pretty clear that Mr. O'Connor was not the person alluded to in the paper addressed to the French Directory, for the paper says, the
bearer

bearer is the person who had gone for the secret committee before, and is in great haste. *There is no pretence for saying that Mr. O'CONNOR had ever borne any message from them before; the paper alludes to an Irish delegate who is present among them, there is no evidence that Mr. O'CONNOR ever was among them, or of any other society whatever!*" This is not the place, again I have to observe, to speak by *etiquette*. This passage insinuates (more strongly, considering its position, and of whom it affected to be talking, than any direct words could convey the same meaning) that Coigly was not only the bearer of a former message to the Directory, of which there was a shadow of proof in his travelling to France before, but also that *HE was the Irish delegate alluded to by the paper, as being present in the secret committee*. There was no evidence that Coigly had sat in the committee, or was of any other society; and if this remark had been made in his behalf by the judge in reviewing the evidence of his case, then the remark when he spoke of O'Connor *could not have glanced at Coigly*. But it does not stand simply thus, that the remark is made in behalf of O'Connor and not in behalf of Coigly; but the inference that the *latter* was the *Irish delegate* is pressed upon the jury by its immediately following that *other inference of his being the former messenger of the secret committee to the Directory*, which inference had the advantage of the proof (urged
as

as *good proof* both by the attorney-general and the judge) of his having travelled with a passport in France. On this *proof* of the traitorous purpose, I make only one remark--it is a *presumptive proof* of the prisoner's innocence, of more validity than all the *presumptions the other way*; for it is a resource of so desperate a kind for the prosecution, as could not have been resorted to by the crown or the judge in any plain and intelligible case of treason.

Having with great industry applied myself to exhibit to my reader the strength of the case on behalf of the crown, I ask him what *overt act of treason* he finds in it? Does any one of the *facts* (I am taking the proof of it to be unexceptionable) include *evidence in itself of a traitorous purpose*? or is any one fact *preceded* or *accompanied* by such other facts as give it a *treasonable character*?

The prisoner's safety, at this point, seems to me to have rested on the same foundation with the law of the land; and in his eventual misfortune, I maintain the law on the subject of treason to be overthrown--for ever overthrown, if this trial be erected into a precedent for future cases. What I have to say farther on the trial shall therefore be very brief. The case of the crown, such as it was made out to be, with the aid of uncontrolled conjectures and inferences (in which comparatively strong condition I wished first to shew it) was, however, affected by parts of the evidence of the crown,

and by other subjects before the jury. The internal evidence of the paper itself shakes the whole case. I grant to the attorney-general that the absurdity of a paper drawn up to invite an invasion of the country does not change the nature of the offence, but the absurdity of the paper is some proof that it was not drawn for such a purpose. A committee braving the dreadful penalties of treason, it is to be expected, would purchase something better by the danger than the power of sending to the enemy the *general, vague, and public* information of the paper*. And if such a committee could be so absurd as to draw up a paper that might have been compiled from the newspapers, what man could be so infatuated as to incur the greater danger of conveying it to *France*? Should we expect him to be a man already hated, watched, pursued by the government? But if any such man were willing to incur all danger to aid the government of France, would he go no better furnished than with this paper?—The attorney-general says, “it is in its nature a *credential* of the man who carries it:” and he adds, the bearer would be accredited to make representations, for others, to the Directory in conversation. On this supposition of the authenticity of this paper, how does the matter stand with the insane bearer of it? He carries, at the peril of his life, a *credential* to the Directory, although he is a

* See in the Appendix, No. IV, a copy of the treasonable paper, as taken from Gurney’s Report of the Trial.

man known to them as the bearer of a former message; and he conveys intelligence in writing which is useless for its want of detail, and could not be forgotten because of its publicity, although he goes instructed to make representations consisting of detail, and therefore liable to be forgotten in part, and making the useful, the essential, in short the entire object of his mission! According to the story told by the evidence for the crown, the prisoner has this dangerous yet useless paper in his great-coat pocket at Whitstable. The baggage of all the prisoners is searched there, and Coigly is expressly told by Perkins (the master of the inn) that the *hoymen* had given information against the prisoners as suspected persons, that the search was in consequence of the information, and that they would be searched again at Margate*. Thomfett, the man who conveyed the baggage to Margate, tells Coigly on the road that the people of Whitstable were all in a *boggle* about him, and explains that term by saying, “*they were all in confusion to know where he was going; they were in a mistrust about him, about where he was going.*” If the paper had contained unquestionable

* The minutes of the counsel and solicitors for the prisoners have these facts in a way that shews the warning given by Perkins to the prisoner to have been even stronger than this; and as those minutes were taken for the purposes of the defence, they might safely be argued upon. But I have chosen to take Mr. Gurney's Report of the trial as my authority, because he was employed by the solicitor of the treasury to take it.

marks of its being a *credential* of the *bearer*, if it had not contained evidence of the bearer being a person *already accredited* with the directory, and wanting no credential; or if the intelligence it was meant to convey had been of so secret, minute, and important a nature as to require the additional weight and security it would derive from being written, I acknowledge any enterprising man, engaged in such an undertaking, would have preserved the paper notwithstanding this uncommon warning. But the paper has properties the very reverse of all these, and the prisoner keeps it in his possession at the unnecessary uncompensated peril of his life. We are to believe this tale on the evidence of the crown. We have seen the perplexed, obscure, and dubious character of that evidence. But we have not seen all its disgrace. The hoymen were not brought to prove the property of the great-coat, along with Smith the master of the hoy; but this fact, disgraceful as it was to the crown when we looked at it in itself, when I was engaged in first putting the case of the crown in the strongest point of view, is more disgraceful now that we know that the *hoymen* were not quiet spectators of the scene, but had actually laid an information against the prisoners. Perkins says, the hoymen were present at the search.

Their

Having had occasion to cancel this leaf, I take the opportunity to inform the reader of a material error in a subsequent part of this Pamphlet: In page 111—for the 5th of June read the 6th of June; and in page 124—for the 6th of June read the 7th of June.

Their curiosity was so excited as to lay an information, and to be present at the search, yet they are not produced. They were never asked by the crown-lawyers, nor *by the gentlemen at the secretary of state's office*, if they had not seen Coigly with a great-coat on? or if they were asked, their answer is suppressed. Thomsett, I have shewn, helped to make out the story of the great-coat; and his evidence is impeached by respectable witnesses, on the part of the prisoners. Cornelius Kettle (a clock and watch-maker at Offham, where Thomsett lives) says, that Thomsett informed him, in conversation, in which he talked of being a witness for the crown, that "it was a good job for him; he would not take a hundred pounds for his job; he had been to London, and there was *rare living there; that good wine was a good thing in a man's belly;*" in some farther conversation Thomsett introduced the subject of the great-coat, and said, "he was one of the principal evidences against these men, and their lives depended upon his evidence chiefly, *on the great-coat that was supposed to belong to some of them;* he had been before Pitt, Dundas, and White; he told them he was a smuggler; Mr. White called him on one side, and said it was not proper he should repeat that in that place; and asked him what he earned a week, he said sometimes more sometimes less, sometimes ten pounds; *they settled upon him six guineas a month till the trials were over, his ex-*

pences

pences to be paid;" and Cornelius Kettle said he thought to himself, "Poor man! they nurse you." Sarah Job * says, Thomsett told her "he would hang the prisoners if they had a thousand lives." Thomsett's son said to her, "I am very sorry, aunt, my father says he will hang the people, and if he does, I won't live at home, for he will see their ghosts afterwards." Mary Morgan, servant of Mrs. Job, said she heard Thomsett say he would hang the prisoners. When Thomsett was previously asked, on his cross-examination, if he never told Kettle he expected a hundred pounds for his job? he answered, "I said, I would not take a hundred pound; my meaning is, bribery---that I would not take a hundred guineas;" and he prevaricated very much on this topic; and, being asked if he had not declared he would hang the prisoners? he qualified the declaration by saying---"if they deserved it;" and he added, "*I slick to my stuff now.*" I say, this witness is completely disgraced by himself: first, in prevaricating and giving a very improbable explanation of his declarations, and secondly, by the front he assumes in holding this language in court: "*I slick to my stuff now!*" But really it is necessary to look a little at Thomsett, as he is displayed in the evidence for the prisoner. Cornelius Kettle is a man of uncommon sobriety of conduct, and of an uncommon character for

* Mr. Gurney calls this witness Sarah Jones; but Job is her name; she is sister of Thomsett.

integrity. There is nothing, in or out of court, to impeach his evidence. What then is Thomsett? A man, on his own declaration, sent for to London by the treasury, and pampered there, and pensioned with six guineas per month till the trial is over, independent of his expences. No wonder he should talk at home before his family, and till he frightened his son, of hanging the prisoners! no wonder he should declare to his sister, he would hang them if they had a thousand lives! That was very natural. But it gives us a very hateful character of those who pampered and pensioned him; and affords a *very awful lesson to jurors!* There is no end to the disgraces of the crown-evidence. Dyason, a waiter at the Inn at Whitstable, was examined to prove a connection between Coigly and O'Connor (for while the crown-lawyers eagerly set Coigly, they endeavoured to drive the other prisoners, especially O'Connor and Binns, into the same toils) and he swore, he *heard, without listening, a pen go*, in their bed-room, as he lay in his own bed in an adjoining room! Mary Lemon, a servant at an inn at Canterbury, was produced to prove a transaction between O'Connor and Binns, on which the attorney-general *laboured* to raise a presumption materially as he thought affecting them; and she undauntedly swore to facts respecting O'Connor and facts respecting Binns, naming them respectively as if their persons were as familiar to her as their names, till she was desired to point them

them out respectively, and then she plainly betrayed an ignorance of their persons, misnaming them repeatedly, although Mr. Garrow, with infinite patience, tried to make her recollect herself, and although she made this declaration, "When I saw them before *in London*, I knew them"--sympathizing in this with Smith, who *no sooner* saw the great-coat *at the secretary of state's office*, than he *fixed upon it to be Coigley's*, but at Maidstone could get no farther than to *think* he could tell the man that wore a coat of the *same kind*. If Mary Lemon's evidence had been put to the jury in the summing up with the comments that necessarily flowed from it, something would have been added to the offences of the crown-lawyers. But the evidence had a tongue in itself, and I have yet to learn the principles on which it was silenced by the judge*.

The explanation of the prisoners' designs afforded by the evidence (taking both sides of it) is not much in bulk, but is very important in its meaning. Mr. Bell (a merchant of the city of London, and one of the witnesses for the crown) in answer to this question from the attorney-general: "Did Mr. O'Connor tell you why he (*Mr. Coigly*) used the name of Jones?" says, "I do not recollect any precise cause, *but that he was a person come from*

* The judge struck Mary Lemon's evidence out of his notes,

Ireland, on account of the state of politics in that country, and perhaps did not think it discreet to go by his real name, that was the only reason, I conceived." And on his cross-examination he repeats this evidence.--"Q. You have been asked about

what Mr. O'Connor told you respecting Mr. Coigly; did he not at the same time tell you that this gentleman was under the necessity of leaving Ireland, that he was a fugitive from Ireland, like himself, and was going out of the kingdom? A. He did so.

Q. You told Mr. Attorney-General, that you understood Mr. Coigly came from Ireland on account of the state of politics in that country, and did not think it discreet to go by his own name? A. I did."

And Mr. Bell again repeats this evidence in answer to questions put by Mr. O'Connor. "Q. Did I not mention to you that he called upon me as an Irishman in a distressed situation, and that he came from Ireland as a persecuted man? A. As an Irishman that was under that sort of apprehension for his personal safety in Ireland, that made it necessary for him to come here; you did so." This evidence

is most unequivocal. Mr. Bell's honour is not to be impeached. What he says of these conversations cannot be questioned: and O'Connor's account of Coigly to Mr. Bell, in a confidential and very affectionate intercourse, is as little subject to doubt. Does any motive, then, appear that might induce Coigly to impose on O'Connor? If he had been an accredited agent of a secret committee

here, and had gone to France before, in a secret manner, with a treasonable commission, he would know the means of making the voyage privately better than O'Connor; and the public character and celebrity of Mr. O'Connor, and the critical nature of his actual situation, would be only so many obstacles to Coigly's clandestine voyage. On the supposition of his guilt, nothing is more inexplicable than his desire to leave the kingdom with O'Connor. The account therefore of himself to O'Connor must be taken as true, because the other supposition is perfectly inconsistent with the character and conduct it ascribes to him. And this evidence is corroborated by Mr. Stewart, a magistrate of the county of Down, and one of the evidence for the prisoner. He says he knew Coigly, and had been on an intimate footing with him; his father's house was *racked* * by the *Orange Men*; he did not see it, but the fact was stated in a petition that came, with many others, before the grand jury, the witness being present as a magi-

* The Orange Men were a society that persecuted the Catholics. *Racking* a house was, destroying or carrying off every thing that could be removed, including furniture, provisions, liquors, money, and often even the doors, window-frames, and other wood-work. In the *Memoirs of Mr. Coigley's Life* (which I have mentioned in the advertisement prefixed to this Pamphlet) is not only a very pathetic account of the particular sufferings of himself and his family from this faction, but also an interesting history of the origin and conduct of the faction.

strate

strate of the county; and he saw a great deal of racking himself. And on his cross-examination, he says, "Mr. Coigly called upon me in London, and told me he was in great distress; *he told me he was under the necessity of changing his name*; I had been under obligations to him of a very particular nature; he said he was in distress, and asked me if I could accommodate him with some money? I told him it was not convenient to me; I had some Irish bills about me, but could get little money for them here; that I expected remittances soon, and would send him some if it was convenient; and I did send him some." I cannot conceive that evidence of the prisoner's real situation could be stronger. But the crown-lawyers and the judge say he gave no explanation on these very important topics---the cause of his leaving Ireland, and his changing his name. We have already seen the direct assertions of the attorney-general and the judge on these points; and the solicitor-general interrupted the speech that closed the defence to make this remark: "Mr. Dallas assumes as a fact, Mr. O'Coigly's being obliged to leave Ireland; *we have no note of such evidence*." I do maintain that the crown produced not one morcel of evidence (if the account of the treating for the hire of a vessel to go to France be excepted) so plain and so distinguished for its inherent marks of truth as the prisoner's evidence to that point.

But the judge sanctions the observation of the

solicitor-general : " The evidence (he says) was no more than that the Orange party racked his father's house *twelve* years ago ; that was by a *single witness*, Stewart*." The crown was permitted to prove the property of the coat *against the prisoner*, by a *single witness* ; the custody of the paper in its pocket, by a *single witness* ; the story of travelling through Holland, Flanders, and France, by a *single witness*. Whence, then, comes this doctrine, that a single witness shall not prove a fact *for* the prisoner ? And I ask who will have the impudence to put Smith, Revett, and Dutton, in competition with Mr. Stewart, for veracity. The judge in the above passage says, that the circumstance of racking the house of Coigly's father was *twelve* years ago ; and in his summing up, he says, it was *ten* years ago. Mr. Stewart says, " there have been persecutions of that kind for ten years past," but he does not name the time, within that period, when the circumstance happened. Why then does the judge in one instance carry it back to the remotest period at which it could happen, and in another to *two* years beyond that period ? In reality, it appears to have happened at a recent period ; for Mr. Stewart says, he saw the petition on the subject before the grand jury, *among many others*, and he had said a little before, " he had known Coigly *about three years* ;" and it is probable the interest

* See page 438 of Gurney's Report of the Trial.

he took in Coigly's concerns, was the reason of his remarking the petition of the father among so many. If there were no more than this conjecture, the probable period of racking the house would be some time within *three* years. But it was a piece of art to seize upon the *racking of his father's house*, as the *precise and immediate cause* of Coigly's leaving Ireland. Mr. Stewart says, Coigly told him in London, *in a confidential communication*, "he was in great distress, and *under the necessity of changing his name*." The necessity of changing his name must arise from some personal danger. So that at last it is probable, that Coigly left Ireland on account of a general and long continued persecution of himself and his family, of which the racking of his father's house was but part, and was not the immediate cause of his flight. If we were demanding an account of Coigly's situation and designs at the time he was arrested, this would be satisfactory, that he told Mr. O'Connor confidentially, "that he was a person come from Ireland on account of the state of politics in that country; that he was a fugitive from Ireland, and was going out of the kingdom; that he did not think it discreet to go by his own name*;" and that he told Mr. Stewart confidentially (and at the time of making these com-

* See Gurney's Report, pages 189 and 193, for Mr. Bell's evidence, as to these facts; and pages 387-8, for Mr. Stewart's.

munications there was no question of explanation in a court of justice) that “he was in great distress, and was under the necessity of changing his name;” and finally, that Mr. Stewart knew (from a petition that came before the grand jury of the county, in which he was a magistrate) that the house of Coigly’s father had been racked by a faction that persecuted the Catholics, and had been witness to a great deal of racking, and great outrages committed by that faction in the neighbourhood of Coigly’s usual residence. But I will not wilfully confound questions in this important business; and I resist the doctrine of explanation as being an iniquitous usurpation upon the law.

I am now arrived at the point (and I have looked toward it with anxious desire) at which my reader has before him this extraordinary case as it went to the jury, not through the faithless statements and glosses of the minister’s dependants, but through the legal and safe channel of the evidence. No man ever stood before a jury in a capital case at the close of the evidence, so perfectly freed from the charge as Coigly did. Some facts relative to his attempt to go clandestinely to France are proved. But with those facts, ends the case of the crown. The custody of the paper is a thing on which we dare not decide. We cannot look the evidence in the face, and say, “there is no possibility of the paper belonging to any other person than Coigly; no possibility of any person putting
the

the paper into his pocket for sinister purposes." To enquire what his intention was in having the paper is a folly, while we have still to enquire if it ever were in his custody. We have looked like fools, in running after the crown-lawyers in pursuit of the intention of an act that does not appear to have been committed. But that chase is over. And we have a solitary fact to decide upon--an attempt to go clandestinely to France. Is this an overt act of treason? Yes, if it be made with intent to invite the enemy to this kingdom. But, enquiring into the intent, we come back to the spot where we hesitated when in search of the facts. The legal path ends with the attempt to go to France. If we will go farther, we are instantly involved in the perplexities of conjecture.

For the jury, I am inclined to believe all they would say for themselves. I know the snares that surrounded them. I know the case was not left in their understanding with the simple character to which the evidence reduced it. I see that every thing that was equivocal was put as proof against the prisoner; every thing for him, omitted--every circumstance for him, to the minutest! I see the jury abandoned, and delivered over to mistake! For them, therefore, I feel pity;---perhaps not less than for the unhappy victim of their mistake.

But good may sometimes be gathered from a melancholy event. Let jurymen hereafter, in all such cases, look *only* at the *evidence*. It is an error

error in them to look to the crown-lawyers, to the judge, or even to the counsel for the prisoner. Their *authority*, their *guide*, is in the evidence. That usually tells a plain story, when it is stripped of extraneous matter, of *facts that have no character, of facts that have no basis but the evidence of disgraced witnesses, and of ingenious suppositions and wicked additions.* And when the evidence fails to tell a story so plain as to admit of *no doubt* of the crime, the obligations of their oath call upon the jury to acquit the prisoner. The *law*, in any such case, cannot be mistaken by them. The crown-lawyers will lay their charges *formally* in the indictment, and so far the counsel for the prisoner may be relied on, that he will see that done. The *rest* is for the jury, and is a plain duty. They are to see that the acts charged as overt acts of the treason be proved by evidence which *cannot* be misunderstood, and proceeding from witnesses who have no individual interest in the prisoner's conviction, and who indeed are *credible* witnesses in the plain full sense of that word; and having laid aside every circumstance that does not stand a fact before them in that clear manner, they are to see that the traitorous purpose of the prisoner be the *infallible* conclusion from the facts. They have to act with jealousy and vigilance! Whatever be the guilt or innocence of the prisoner, the minister they may be sure views the trial with the passions of a statesman; the

crown;

crown-lawyers are inevitably his tools; and the judge may be ambitious or rapacious, in which case he will have an individual interest in the prisoner's blood, while there is a rank to which he can be raised, a post of emolument into which he can be put.

It will be seen that I have hitherto carefully abstained from touching upon any topic, in behalf of Coigly, which was not before the jury. But evidence exists that I think will decide the reader's doubts. I have shewn how far Coigly's situation was explained to the jury. I now refer my reader to two letters*, which as they were written by him confidentially to two friends, will, first, corroborate the account of his flight from Ireland as it stood in the evidence of Mr. Bell and Mr. Stewart; and secondly, will shew that Coigly earnestly sought the means of a farther explanation of his character and situation as far as they lay within his reach.

The account of Mr. Coigly's conduct in his last moments, which will be found in the following pages, and his uniform declarations to the court, the jury, and the spectators of his death, afford, I think, a presumption of his innocence. In his address to the court when he was arraigned, and in that to the jury at the close of the defence †, it is true he is to be considered as an accused man,

* See Appendix, No. V. † See Appendix, No. VI.

and his words were to be received with great caution; yet there is a manliness in them, and in that to the jury there is a correspondence with the purport of the evidence, that then ought not to have been disregarded, and they are now corroborated by his dying address. To these declarations two others are to be added, in my opinion of still more force than even the dying declaration, solemn as that is. Mr. Coigly wrote a letter to the attorney-general a little before the warrant for his death was announced to him, and another to the Duke of Portland* immediately after that awful ceremony, which bear such internal marks of their sincerity as I think no man will question, and each of which contains a declaration of his innocence.

I have had occasion to say a great deal on the character of this trial in commenting on what was before the jury. A correspondence which took place after the trial, between Mr. Foulkes (Coigly's solicitor) and the Duke of Portland, on a very extraordinary topic relative to the trial, will shew, I have no doubt, that my opinion is not incorrect, nor my expression of it uncharitable. I refer my reader to the Appendix † for a narrative of this transaction, and am happy I am enabled to give it in Mr. Foulkes's own words. On this subject I shall make one or two short remarks. Mr. Foulkes is informed, from a quarter whose authority is not to be questioned, that there was a variance in a

* See Appendix, No. VIII. † See Appendix, No. VII.
material

material point, between the account given by Revett and Fugion before Mr. Ford at Bow-street and their evidence at Maidstone; having stated this information in a letter to Mr. Ford, he receives a written answer to this effect: "That the examinations taken before Mr. Ford at Bow-street, were not in his possession; and that he had delivered them up to the secretary of state, and had not seen them since that period*." Mr. Ford, to use an expressive phrase, washes his hands of the matter, by this answer. But what are we bound to infer from it? Mr. Ford could not be ignorant of the variance, if it existed. In that case, it would be natural for him to act as he did. As an officer of the government, we may allow him, with no more than common laxity in our morals, to keep their secret and screen himself in this manner. But on the other supposition, the very opposite conduct would become his *duty* and his *INTEREST*. There could not be two ways for him to choose between. To deny the variance would be creditable to himself and to the government; and indeed it was a thing of such imperious necessity as not to be evaded, even in the case of the existence of the variance, without extreme mortification. The conduct of the secretary of state, and his officers, and the crown-lawyers, in this transaction, is strong presumptive proof of the existence of the variance.

* See p. 14 of the Appendix.

I do not mean to follow it here. I shall only say a word of its conclusion. At the very time when the warrant for the execution was on the road to Maidstone, if not already arrived there, the attorney and solicitor-general, Mr. Wickham, and Mr. Ford, having Mr. White with them, affect to be in consultation in Mr. Wickham's office, on the subject of the variance, Mr. Foulkes waiting the meanwhile by appointment in an adjoining chamber; and at four o'clock of the same evening on which the warrant was announced to Coigly between four and five o'clock, Mr. Wickham informed Mr. Foulkes that the answer would be unfavourable, but asked him "*whether he had any thing farther to urge on the prisoner's behalf?*" and after some conversation, in which Mr. Foulkes stated a new ground for still urging his application (which the reader will find to be a very extraordinary confession of Mr. Ford to him as he passed on that very occasion to Mr. Wickham's office) Mr. Wickham said, "*certainly, on an occasion like this, we shall think nothing troublesome*.*" This was, I remind my reader, a little before *four o'clock*, and before *five o'clock of the same day* the warrant was announced to the prisoner, *at the distance of five-and-thirty miles from this scene*. I have no inclination to comment on this proceeding.

I have only one circumstance more to state in behalf of this unfortunate man. It is a fact that not only proves him to be innocent of the charge,

* See Appendix, pages 21-2.

but

but even ignorant of the contents of the treasonable paper. The date of that paper is, the 25th of January, and on that day Mr. Coigly was in Dublin, and dined in company with a gentleman who is about to publish his posthumous papers, and who has related this circumstance in his preface to that work ; and on his authority, expressly given me, it is that I now state the fact. But there is a part of the crown-evidence, from which we may safely conclude that Coigly was not in England on the day, nor even in the month, when the paper purports to be written. Mr. Bell says, “ He (*Mr. O'Connor*) never informed me any thing of Mr. Coigly’s arrival from Ireland till I saw him in my own house, *about the middle of February ; I understood he had come some very few days before, two or three days before, as Mr. O'Connor told me ; I understood from Ireland*.*” There is nothing to impeach this evidence. Mr. O’Connor is talking to Mr. Bell of Coigly’s arrival from Ireland, and could have no motive to misrepresent the time. Mr. O’Connor probably related the fact from Coigly’s own account. That is not directly said, but it flows naturally from the situation of the parties. It is not, however, of much importance where Mr. O’Connor got his intelligence. There is no apparent interest in any person living to de-

* These are answers to questions of the attorney-general. See Gurney’s Report, page 194.

ceive Mr. O'Connor in this matter. Why was this evidence, which appears to me to raise a very strong presumption of the prisoner's innocence, overlooked by the judge? If he thought the law of the land authorised him, first, to *speculate on the case* openly in the court, and secondly, to press the result of his *conjectures* upon the jury, as his decided opinion on the question of the guilt or innocence of the prisoner*, did he also mistake the law in that amiable part of its character which enjoins the judge to be counsel for the prisoner? or was there no monitor in his breast to say, "Hold! be not an advocate against the unfortunate man!"

On the kind of case we have seen, Mr. Coigly was convicted and died. From the moment of his conviction he began to prepare for death; and his preparations were such as prove him to have deserved a happier fate. Having taken an affectionate and dignified leave of the other prisoners and his friends, he applied himself with the activity and vigour of a man who has a favourite pursuit to subjects by which the few

* That the judge did *speculate on the case*, and that *very wildly*, I call upon every person to see for himself (who has the power) in the judge's summing up; and that he pressed the result of his speculations *inordinately* on the jury, I prove by his own words—"Perhaps (he says) as to the first prisoner (*Coigly*) I have stated my *own* opinion pretty strongly."

hours he had to live might be made useful to others. He lamented that he had trusted his defence out of his own hands, and to counteract the public part of the mischiefs of his trial, was now his chief wish. But he was far from being inflexible to his own interest, in its dearest part. He had an eager, perhaps an extreme anxiety for his fame. With views which were hence made up from public and private motives, he wrote a very long letter to a friend, in order to point out the chief errors of the trial. He then wrote a very affecting address to his own countrymen; and the hour of his death being very unexpectedly delayed, he seized upon the occasion to compose memoirs of his family and of his own life*. He did not deceive himself respecting the causes of this delay; he knew there was no way to a reprieve, but one he disdained. In answer to his solicitor, who had conceived hopes (honourable to himself) of saving Coigly, when he communicated a portion of his hopes to him, he said, "It is in vain to make any attempt in my favour."

On the evening of the 5th of June, the gaoler announced to him the arrival of the warrant, for his execution on the following morning at eleven o'clock. The gaoler had conceived a high esteem

* The whole of these papers are in the press, under the inspection of the gentlemen to whom Mr. Coigly committed them.

of him, and was greatly affected while he read the warrant; and Mr. Coigly, undisturbed at his own fate, endeavoured in the kindest manner to restore his tranquillity.

A few minutes before this, he had finished a letter to the attorney-general, and as soon as Mr. Watson (the gaoler) withdrew, he wrote a letter to the Duke of Portland*. He then wrote a very affecting and noble letter to his solicitor†. Having taken copies of these three letters, he ate his supper, and after his usual evening's devotions went to bed.

Two gentlemen who had gone to Maidstone post, during the night, to attend his last moments, arrived early the next morning, and one of them was permitted by the gaoler, to visit Mr. Coigly, to receive his last wishes. Mr. Coigly said, "You do not find me very well prepared, as to strength, to discharge my important duty; I have had little sleep‡, and my stomach is disordered. Yet I trust I shall not act unworthily." He spoke on several topics with dignity, and on some with vehemence. He complained, with a mixture of anger and sorrow, of the confessor

* These are the letters I have already alluded to, copies of which are in the Appendix.

† See the Appendix, No. VII, page 23, for this letter.

‡ He was kept awake by a large fire in the room, and the noisy conversation of two men who sat up with him.

who attended him. "We have not yet (he said) composed our differences, and I almost fear we shall not." This supposition moved him extremely. "But his conduct (he said) is not only inconsistent with his situation as a clergyman and a gentleman, but interferes with the devotions in which I would gladly pass my time with him." He left that subject for another; but he afterward said, "He (the clergyman) not only insists upon my confessing the treasonable act with which I am charged, which I expect him to do, but he entreats me to accuse others." And then Mr. Coigly named persons, both in Ireland and here, whom the clergyman urged him to accuse. "He not only offered me (he continued) my life and my own terms, but he assailed me on the side of religion. I uniformly answered, I have no confessions to make. I just now said to him, I wish you would permit me to die in peace with you." The contests between Mr. Coigly and this gentleman seem to have been at times very bitter. The clergyman complained of some reports which were spread to his discredit concerning this subject, and desired Mr. Coigly to contradict them. He answered, "If you conduct yourself toward me as becomes your character, I will say something at the place of my execution, to remove the effects of those reports." Mr. Coigly added in speaking of this, "yet he persecutes me up to this moment."

Q

He

He spoke successively with indignation and grief of calumnies concerning him that appeared in some of the papers. "Your presence (he said) relieves me from great anxiety. It would have been hard for me to die without a friend near me, on whose integrity I could rely to rescue my last moments from falsehood.-- But I contemplate a greater object in your presence. I am a murdered man, and I would not have my death thrown away, by its manner being belied." An eager love of fame was part of his sentiment at this moment, but it was lost in his greater passion for the public benefit. While he spoke of his approaching death, which several times occurred, although it was plain he had fully estimated its many horrors, yet his feelings always rested on a nobler view of it, and his eye and countenance often expressed his exultation at his approaching triumph.

That he had a very ardent wish that his memory should be cherished in the bosom of his friends, will be seen by his attention to a circumstance that would not be expected to occupy his thoughts in the very last hour of his life. He lamented that his friends could not be gratified with his portrait. Having stated that a gentlemen of rank, whom he named, had employed a painter to take it, he said, "The proof that gentlemen gave me of his esteem was very pleasing to me, but a brutal fellow has robbed me of the satisfaction of knowing
that

He said, he had no wish left for his friends to execute, but that his papers should be published, and a faithful account of his death. He added, "The attorney-general is privy to my murder. I hope you have courage to see that this fact is not kept back from the world."

He sent his last thanks to his solicitor, of whose exertions in his behalf he spoke with gratitude; and then he said, "Farewell, till I see you again at the place of my execution!"

 Q_2

them."

them." He held a prayer-book in his hand, and he rose and prepared to read part of the Roman service, but the clergyman who had attended him in prison, stood at his side speaking earnestly to him in a low voice, and for some minutes interfered with his devotions. He listened with patience, but with evident disapprobation of the subject of the discourse. When he began his devotions, he read aloud several prayers in the Latin tongue. In a few minutes, he took an orange from his pocket, and afterward a penknife, but his arms being bound he could not cut the orange, and beckoning to his friend he said, "Open this orange with my penknife: it has been said they would not trust me with a penknife, lest I should cut my throat; but they little knew that I would not deprive myself of the glory of dying in this way." His friend having quartered the orange and given him a piece of it, he desired him to keep the penknife for his sake. He continued to read standing for more than a quarter of an hour, when he knelt down and chaunted a psalm, and then concluded with a prayer which he spoke inwardly. During the service, his thoughts seemed wholly absorbed by the subject. In a prayer in which he called upon God for aid in his sufferings, he was much affected, and wept. But when he chaunted the psalm, he seemed to be animated with hope. At the conclusion of the service, the clergyman renewed his discourse to him in a whisper.

It

It was plain that Mr. Coigly was offended with a part of it. He shook his head, and in a solemn manner said, "No! no!" It was impossible to draw any safe conclusion as to the subject, but it was probable it was that on which the clergyman had been so importunate in the prison. At the close of it, however, was a proposition to which Mr. Coigly assented, for he bowed and said, "Yes; I will*;" and giving the clergyman his prayer-book, he shook hands with him, and bade him farewell. He now stepped out of the hurdle, and his friend offered him a piece of the orange, which he took; and having eaten it, he bade him farewell. He walked up to the gaoler, who was on horseback at a few paces distance, and said, "Mr. Watson, farewell! God bless you! Your conduct to me has been very kind and generous, and I thank you for the many civilities you have shewn me.-- God bless you!" He shook hands with Mr. Watson; and then ascended the ladder with unshaken courage. As the executioner prepared the rope, the man said something that was probably an apology, for Mr. Coigly answered, "Say nothing; you know you must do your duty." The executioner, when he was about to put the rope over his head, said, "You must turn your

* There can be no doubt this related to the words he spoke in behalf of the clergyman in his dying address.

back,

back, sir."---Mr. Coigly bowed, and turned round. When the rope was round his neck and fastened to the tree, and his arms bound behind, he spoke in the following manner :

"MR. SHERIFF,"

(The sheriff approached, with his hat off).

"Put on your hat, sir," *(Mr. Coigly said)* "put on your hat."---*(The sheriff stood with his hat off, till Mr. Coigly concluded his address.)*

"It is customary, you know, sir, in cases of this sort, for a person standing in my unfortunate situation, always to say something, more or less, to those who accompany him ; but I do not think it requisite to say so much as I otherwise should, upon the present occasion, because I have taken the pains already, under my own hand, to draw a regular declaration---a convincing thing it will be, I think, to the world at large---and a sketch also of my unfortunate and afflicted life ; I have sent them both to a friend in London, and I hope they will be published. I have therefore now only to make my last and solemn declaration :---

"I never was the bearer of any letter, paper, writing, or address, or message either written printed or verbal, to the directory of France, or to any person on their behalf, of which I am accused, nor has any person for me been such bearer. I farther declare, that I never was a member of the Corresponding Society, nor any other political society in
Great

Great Britain, nor did I ever attend any of their meetings, public or private. So help me, God !

“ Surely if a man is to be believed at any time, it is when he is going into eternity, before the bar of the Heavenly Father and Almighty God. Before him I now solemnly declare the truth of what I am now saying. I declare it under this impression. Whether it will be believed by men or not, is a matter that must rest with posterity. I hope history and posterity will do me justice ; but if not, I go instantly before a tribunal where it is known that I speak the truth.

“ My life is falsely and maliciously taken away, by corrupt and base perjury, and subornation of perjury. But God forgive my enemies ! I have long, long been persecuted by the government of Ireland. The first cause for that persecution was, my having endeavoured to teach the people this lesson : ‘ That no man could serve his God by persecuting his neighbour for any opinion, and particularly for any religious opinion.’ I have always said, ‘ If men wish to serve God on earth, they should give up their persecuting spirit.’ This was the first cause of my persecution.---The second cause of my persecution was, a contested election in Ireland, in which I used my endeavours to prevail on my father and my brother, who were freeholders, to poll for the opposition candidates.---The third, and final cause of my persecution, was (and it was supported by charges which have been since retracted)

retracted) because I was active in procuring a long and spirited address to his majesty, to put an end to this most calamitous war, and to dismiss those who are falsely called his servants.

“ I forgive from my heart, with pure Christian charity, every man who has had a hand in my murder; for I declare it is a most wicked murder. ***** and ***** perjured themselves; but God forgive them! Mr. **** perjured himself by suppressing proofs he held in my favour; but God forgive him! ***** , a man of most infamous character, corruptly perjured himself; but God forgive him also! Mr. ***** perjured himself; but God forgive him! Two others perjured themselves, one of them was a poor ignorant lad; but God forgive them all, as I now do. I forgive them from my heart. I have no doubt that, when the clouds of prejudice and alarm shall pass away, justice will be done me; and I hope my sufferings will be a warning to jurors to be cautious how they embrue their hands in innocent blood.

“ Some few disputes took place between me and my brother clergyman who attended me. I have said some harsh things of him, for which I beg his pardon. I wish to die in amity with all mankind. We are now, thank God, agreed.

“ I have now finished. --But, gentlemen, I commend to you---I do recommend to you, men of Kent, in time to come to beware how you permit

mit any persons to take advantage of you, and to guard against the snares of the crown-lawyers. It has been the fate of your county to shed the blood of a poor helpless innocent stranger.---May Almighty God forgive all mine enemies; and I desire of you all to pray to God to grant me grace to support me in this moment, and to enable me to die in a manner worthy of my integrity. I have many sins to answer for, but they are the sins of my private life; and I am innocent of the charge for which I die.

“O Lord! have mercy on me, and receive my soul!”

He spoke with so firm and distinct a voice as to be heard by all present. His manner was impassioned, but distant from all extravagance. Having concluded, he said, “I am ready;” but the rope had got out of its place, and the executioner had again to adjust it. During this time, Mr. Coigly’s countenance was expressive of peace within. While the cap was drawing over his face, he made signs to his friend to approach nearer, and bowing dropped his handkerchief at his feet. That most trying space of time between the moment when the cap was drawn over his face and the falling of the platform, was longer than is usual; during all this time no trepidation could be discovered in his limbs or muscles. His lips moved, and his hands were lifted up in prayer, to the last moment. He died apparently with little suffering.

R

The

The spectators behaved with great respect toward him*. When he declared his innocence, a buzz of applause ran through the multitude, and there was even some clapping of hands. Toward the close of his address, many of the spectators wept, and some of the soldiers were unable to repress their tears.

Mr. Coigly was descended, both by his father's and mother's side, from very ancient Roman catholic families in Ireland. His father, who is a farmer in moderate circumstances, and a respectable old man, resides in the parish of Kilmore, in the county of Armagh, on the spot where Mr. Coigly was born. He educated his son for the church, and sent him first to the grammar-school at Dundalk, in the county of Louth, where he was instructed in the rudiments of the learned languages and the mathematics, and afterward to the Irish College of Lombard in Paris, where he finished his studies. In 1789, he returned to Ireland; and having taken orders settled at Dundalk, where he continued to officiate as a Roman catholic clergyman, till he was driven from that place by the persecutions of the Orange Men and the Irish government.

* It is due to the sheriff to say, that he conducted himself with something more than common propriety, indeed with very great humanity. He gave orders to the executioner to spare the prisoner all unnecessary pain; and assiduously watched to see that done.

In

In places where he resided for a length of time, he was well known for his talents and virtues. At the college in Paris he soon was considered as a youth of vigorous intellect and inflexible fortitude. In the north of Ireland, in the counties of Armagh, Louth, Down, and Antrim, he was beloved and admired, and as sincerely by the Protestant dissenters as the Catholics. His public labours were directed against the tyranny of the Beresford faction, and the savage persecutions of the Orange Men*. His private occupations shed blessings on the poor, the sick, and the afflicted. His amiable and great qualities were unfulfilled by any private vices. In speaking of him on this side of his character, I will use his own honest words; "In point of moral conduct, even my enemies will not, nor ever did attempt to impeach me; never did I knowingly injure any one; I was always an obedient child, dearly beloved and cherished by my parents---alas, my untimely fate will bring down their hoary hair with sorrow to the grave!"

The characteristics of his temper were of a noble kind. They were frankness, constancy, and generosity. Of all his transactions from a boy to his last scene, these are the predominant qualities. Perhaps his facility in sacrificing his own in-

* I refer my reader for an account of the circumstances of his public life to his own Memoirs.

terest to that of others was too great. In his last moments it marked his feeling, for he not only forgave the clergyman who persecuted when he ought to have consoled him, who tempted him to crimes when he ought to have fortified him if wavering, but with an excess of generosity he endeavoured to remove the odium which that person had justly incurred.

He died on the 6th of June, aged 36.



APPENDIX.

No. I.

*Copy of a Letter from the Rev. ARTHUR YOUNG, to
GAMALIEL LLOYD, Esq.*

[The following letter was laid before the court, by Mr. Plumer, on the first day of the trial, together with an affidavit of Mr. Lloyd, the gentleman to whom it was addressed, stating, that he received it on or about the 3d of May, from Arthur Young; and that on the 19th of May, he saw Mr. Young, and informed him that the letter would be made a subject of complaint against him, in the court, and advised him to go to Maidstone and extenuate his fault, in the best way he was able; and that the mother of Mr. Young being present, she also urged him to inform her of the names of the jurors to whom he had spoken, as stated in the letter, but he refused to comply with her request; and that he (Mr. Lloyd) advised Mr. Young to consult Mr. Forbes, an attorney, and a relation of his, as to what it would be best for him to do, and to act accordingly, to which Mr. Young seemed to assent.

Mr. Young was called on by the crier of the court, but did not appear.

Notwithstanding the plain nature of this letter, the writer's father attempted (injudiciously as it appears to me) to turn the letter into a "piece of pleasantry." His argument is, that it was written to a gentleman, whose political sentiments were different from those of his son, and therefore could not be written seriously; and that it was written to frighten that gentleman, whom he supposed to have had an anxiety for the prisoners—believing them to be innocent.

* B

I should

I should have thought it unjust to have given the Reverend Mr. Arthur Young's letter, without the preceding sketch of his father's explanation; but having done that, I leave the transaction to the reader.]

DEAR SIR,

I DINED yesterday with three of the jurymen of the Blackburn Hundred, who have been summoned to Maidstone, to the trial of O'Connor and Co; and it is not a little singular, that not one yeoman of this district should have been summoned to an assize for this county, nor to any of the quarter-sessions (excepting the Midsummer) for more than 50 years. These three men are wealthy yeomen, and partizans of the high-court party. Now this is as it ought to be; and as they are good farmers, and much in my interest, to be sure I exerted all my eloquence to convince them how absolutely necessary it is, at the present moment, for the security of the realm, that the felons should swing. I represented to them, that the acquittal of Hardy and Co. laid the foundation of the present conspiracy, the Manchester, London Corresponding, &c. &c. I urged them, by all possible means in my power, to hang them, through mercy, a memento to others; that, had the others suffered, the deep-laid conspiracy which is coming to light would have been necessarily crushed in its infancy. These, with many other arguments, I pressed, with a view that they should go into court avowedly determined in their verdict, no matter what the evidence. An innocent man, committed to gaol, never offers a bribe to a turnkey, to let him escape. O'Connor did this, to my knowledge; and although the judge is sufficiently stern, and seldom acquits when hanging is necessary; the only fear I have, is, that when the jury is impannelled, the *blues* may gain the ascendancy. In short, I pressed the matter so much upon their senses, that if any one of the three is chosen, I think something may be done. These three men have gained their good fortunes by farming; and, I think, they are *now* thoroughly sensible, that they would lose every shilling by acquitting these felons.

I have

I have seen, sir, that detested shore, that atrocious land of despotism, from Shakspeare's Cliff, Calais steeples; and truly I shuddered, not at the precipice, but by contemplating the vicinity to me of a miscreant crew of hellions, vomiting their impotent vengeance, and already satiating their bloody appetites, upon my country. Ah! my good sir, we are safe; it is next to a moral impossibility that in Sussex or Kent, they could land in force; the batteries, forts, &c. are so numerous, that hardly a gun-boat could escape being blown to atoms. But Ireland, alas! alas! it is lost, sir; I fear it is gone. Here government are *now* spending hundreds of thousands, in fortifying what can never be attacked; they are fortifying the castle with out-works, ravelins, counterscarps and immense ditches; and they are absolutely burrowing under the rocks for barracks. It is, indeed, a most prodigious undertaking, but absolutely *useless*. It is a pity, indeed it is, when money is so much wanted, to see it so wantonly wasted, and all done in *throwing down the cliff upon the beach*. Remember me to Mrs. L. and your family: assure her, we all expect a republican visitation. This county is split into party, but I never enter the habitation of a yeoman, but I see the sword of its owner suspended: glorious sight! But the Militia, O Lord! at Horsham, Shoreham, Ashford, Battle, Lewes, Brighton, Ringmer, &c. &c. I very seldom meet with a sober man: it is nothing but a dreary sight of drunkenness. Fine soldiers *in action!*—*their pay, their pay*, so extravagant!

I have *now* as fine a sight of the chalk hill opposite as ever was seen. The sun is setting upon that vile land, and presents an object not a little disagreeable.

Your's, truly,

Dover, May-day.

A. YOUNG.

Addressed—Gamaliel Lloyd, Esq. Bury St. Edmond's,
Suffolk.

No. II.

[The following EXTRACT from Mr. Gurney's Report of the Trial, will show the cause of challenge against Mr. Raikes.]

“ *MR. PLUMER*—I challenge Mr. Raikes, for cause.

“ Mr. John Foulkes sworn. *Mr. Plumer*—Did you see Mr. Raikes at the time of the arraignment of the prisoners?

A. Yes. *Q.* Did you hear him say any thing respecting the prisoners at that time? *A.* He stood pretty nearly in the place where I now stand (near the bar) and he enquired the names of the prisoners separately. The last of the prisoners happened to be Mr. Binns, whom I pointed out. He looked them all stedfastly in the face, quite close to them, clenched his fist, and exclaimed, “ Damned rascals ! ”

“ Thomas Watkinson Paylor, esq. and Isaac Rutton, esq. were sworn, to try whether Thomas Raikes, the juror, stands indifferent between our sovereign lord the king and the prisoners at the bar, and thereof a true verdict give according to the evidence.

Mr. Foulkes was again sworn, and repeated his evidence.

“ The solicitor-general sworn. *Solicitor-General*—Mr. Raikes, when I have seen him at different times, has repeatedly expressed to me his extreme unwillingness to be upon the jury; and this morning, as I was coming into court, stated to me the extreme inconvenience that it would be to him, to be upon the jury, and that he had made an application to your lordships, with a view not to serve upon the trial.

“ *Mr. Justice Buller*—Gentlemen, you will say, upon the evidence you have heard, whether you are of opinion that Mr. Raikes is a person who will try those prisoners indifferently, upon the evidence that may be given; or not?

“ After consulting together, one of the gentlemen said, as the oath is taken against Mr Raikes, we think he had better be omitted.”

No.

No. III.

*List and Description of the Jurymen challenged
by the Crown.*

[Of this list, twelve are farmers, and six are gentlemen, that is men of middling condition.]

Thomas Newnham, *Esq.* of Bromley.
 John Willis, *Gent.* of Beckenham.
 Thomas Poole, *Gent.* of the same place.
 John Nesbitt, *Esq.* and Merchant, of Keston,
 James Bedell, *Farmer*, of North Cray.
 William Wilmot, *Gent.* and Paper Maker, of Che-
 vening.
 William Everest, *Gent.* of Olford.
 Henry Dyson, *Gent.* of Sundrish.
 Valentine Hackleston, *Gent.* of Seven Oaks.
 Thomas Ralph, *Gent.* of Kirnsing.
 James Harbroe, *Esq.* of Leigh.

Here Mr. Scott got up and argued, in a manner that did honour to his head and heart, against the crown challenging *without cause*; after which the attorney-general challenged

John Wenham Lewis, *Esq.* of Lewis Westerham.
 Edward Whitaker, *Farmer*, of the same place.
 William Marchant, sen. *Esq.* of Chiddingstone.
 William Haynes, *Farmer*, of the same place.
 Thomas Johnson, *Farmer*, of Wrotham.
 John Taylor, *Farmer*, of the same place.
 Thomas Fry, *Farmer*, of the same place.
 Thomas Selby, *Esq.* of Ighitham.
 Thomas Knowles, *Farmer*, of the same place.
 John Taylor, *Esq.* and Paper Maker, of Basted in
 Wrotham.
 William Blatcher, *Farmer*, of Shipborne.
 Richard Hosmer, *Farmer*, of Mereworth.
 James Adkinson, *Farmer*, of the same place.
 Thomas Seabrook, *Farmer*, of the same place.

No.

No. IV.

[The following is a copy of the paper, stated to be an ADDRESS to the
DIRECTORY OF FRANCE.]

The Secret Committee of England, to the Executive
Directory of France.

Health and Fraternity!

CITIZENS DIRECTORS,

WE are called together, on the wing of the moment, to communicate to you our sentiments. The citizen who now presents them to you, and who was the bearer of them before, having but a few hours to remain in town, expect not a laboured address from us: but plainness is the great characteristic of republicans.

Affairs are now drawing to a great and awful crisis. Tyranny, shaken to its basis, seems about to be buried in its own ruins. With the tyranny of England, that of all Europe must fall. Haste, then, great nation! pour forth thy gigantic force! Let the base despot feel thine avenging stroke; and let one more oppressed nation carol forth the praises of France at the altar of Liberty.

We saw with rapture your proclamations. They met our warmest wishes, and removed doubts from the minds of millions. Go on! Englishmen will be ready to second your efforts.

The system of borrowing, which has hitherto enabled our tyrants to disturb the peace of a whole world, is at an end: They have tried to raise a kind of forced loan—*it has failed*. Every tax diminishes that revenue it was intended to augment, and the voluntary contributions produce almost nothing. The aristocracy pay their taxes under that mask: The poor workmen in large manufactories have been forced to contribute, under the threat of being turned out of employ; even the army have been called upon to give a portion of their pay to carry on the war—by far the greatest
part

part have peremptorily refused to contribute to so base a purpose; and the few that have complied, have in general been cajoled, or reluctantly compelled to it.

Englishmen are no longer blind to their most sacred claims. No longer are they the dupes of an imaginary constitution. Every day they see themselves bereft of some part of the poor fragment of democracy they have hitherto enjoyed; and they find that, in order to possess a constitution, they must *make one*.

Parliamentary declaimers have been the bane of our freedom. National plunder was the object of every faction, and it was the interest of each to keep the people in the dark; but the delusion is past! the government has pulled off its disguise; and the very men who, under the semblance of *moderate reform*, only wished to climb into power, are now glad to fall into the ranks of the people. Yes; they have fallen into the ranks; and there they must for ever remain—for Englishmen can never place confidence in them.

Already have the English fraternized with the Irish and Scots, and a delegate from each now sits with us. The sacred flame of liberty is rekindled. The holy obligation of brotherhood is received with enthusiasm. Even in the fleets and the armies it makes some progress—disaffection prevails in both, and united Britain burns to break her chains.

Fortunately, we have no leader. Avarice and cowardice have pervaded the rich, but we are not therefore the less united. Some few of the opulent, have indeed, by speeches, professed themselves the friends of democracy; but they have not acted, they have considered themselves as distinct from the people, and the people will, in its turn, consider their claims to its favour as unjust and frivolous. They wish perhaps to place us in the front of the battle, that, unsupported by the wealth they enjoy, we may perish when they may hope to rise upon our ruin. But let them be told,
though

though we may fall through their criminal neglect, they can never hope to rule, and that Englishmen, once free, will not submit to a few political imposters.

United as we are, we now only wait with impatience to see the hero of Italy, and the brave veterans of the great nation. Myriads will hail their arrival with shouts of joy; they will soon finish the glorious campaign! Tyranny will vanish from the face of the earth, and, crowned with laurel, the invincible army of France will return to its native country, there long to * well earn't praise of a grateful world, whose freedom they have purchased with their blood.

L. S.

6th Pluviose, A. R. P. G. 6.

No. V.

*Copy of a Letter from Mr. COIGLY, to Mr. *** ***,
Dublin.*

April 19th, 1798.

I AM to be tried for my life, in a few days, at Maidstone, in Kent. My counsel and friends think your testimony would be of considerable service to me, as you could prove the origin of the Orange business, what my family and other catholics suffered in it; my attendance at Armagh assizes to have them prosecuted, &c. &c. I beg you may also find *****; he will surely come. His evidence will be useful to prove, that he, with others, was arrested, under the same accusation as was brought against me, at Dundalk, &c. Both your evidence will be of the more use, as you have known me for a long time. Perhaps ****, *****, or *****, could be of use to me. Lose no time, but consult the necessary persons who may be useful. The chief

* It stands thus in the original.

evidence

evidence from Ireland against me are men of shocking characters; viz. Frederic Dutton, late of Newry, Charles M'Fillin, of Ballymulligan, near Magerafelt, both informers. See if you can find any person who knows M'Fillin, and could discredit him upon oath. Perhaps ***** could discredit Dutton; ***** of Dundalk, could. Denis Fitzpatrick, gaoler of Dundalk, is summoned against me; as also Woods, a revenue-officer there, which latter I don't know. Do all you can. There are also a John Jackson, cloth-merchant, summoned; Marian, a king's messenger; and Oliver Carlton, high-constable, all of Dublin. These last-mentioned I do not know. They have summoned also the collector of Derry, Rowley Gorges Hill; I know nothing of him. Get some one to apply immediately to ***** and ***** to see if either of them could serve me. The latter could prove my assisting to prosecute the Orange men. So could *****.

JAMES COIGLY.

*Copy of a Letter from Mr. COIGLY, to Mr. ***** , Dublin.*

April 19, 1798.

Your evidence will be very material to shew why I was forced to leave Dundalk at first—the whole business of the Orange men—why I fled from Ireland the last time—my intention on leaving Ireland the last time—my general character, &c. &c. The witnesses summoned against me are, Woods, said to be a revenue-officer at Dundalk; Denis Fitzpatrick, the gaoler; Frederick Dutton; Charles M'Fillin, of Ballymulligan; R. G. Hill, collector of Derry; John Jackson, cloth-merchant, of Dublin; Marian, a king's messenger; and Oliver Carlton, high-constable of Dublin.—I know nothing of Woods, Hill, Jackson, Marian, or Carlton. I think ***** could assist me much in overturning the evidence of Dutton, and as to character. Per-

* C

haps

haps ***** could assist me, or some other dissenter or protestant, against Dutton. McFillin I know very little of, and of course, am afraid you will not be able to procure evidence to discredit him. See what evidence can be got as fast as possible. Perhaps *****, *****, *****, *****, or ***** could serve me. You know I did my utmost to prosecute the Orange men, and to procure the dismissal of the present ministers by petition to his majesty.

JAMES COIGLY.

No. VI.

Copy of Mr. COIGLY's Address to the Court upon his Arraignment.

MY LORDS,

UPON reading over the indictment, it appears to me, that there is an error in it which might vitiate it with respect to me, and of which I might probably take advantage in pleading, namely, that my real name is neither of those which are there stated; my name, my lords, is James Coigly, and not James O'Coigly.

It strikes me also, my lords, that I am not properly described in the indictment, as it calls me a labourer, whereas I am of a profession.

I am also informed, that Margate, where I was arrested, and where the crime is alleged to have been committed, is within the jurisdiction of one of the cinque ports, which might perhaps entitle all the prisoners to be tried there, and not in the county of Kent generally.

But, my lords, without enquiring whether these objections are well founded or not, such is my reliance on the justice and impartiality of a jury of the county of Kent at large

large—such is my conviction of my own innocence—and so satisfied am I in my own conscience that I have not been guilty of treason against my king or my country, that I readily wave them all, and therefore plead to the indictment—Not guilty.

Copy of Mr. COIGLY's Address to the Court and Jury, at the Close of the Defence.

MY LORDS AND GENTLEMEN OF THE JURY,

As I cannot *prove* a negative, I think it a serious duty I owe to myself, to my country, and to you, in the awful situation in which I now stand, to **DECLARE** to you, under all the solemn impressions of that situation, that I never was the bearer of any former address from any man, or body of men, in this country or my own, to the Executive Directory of France; and that the absurd and contemptible paper, which is made the ground of the present serious charge against me, is **NOT MINE**. Upon the very face of it, it was intended to be taken to France by some person *who was the bearer of a FORMER ADDRESS*. I repeat, gentlemen, I **WAS NOT** the bearer of that address, or any other. If I had been, *that*, although it was impossible for me to prove *the negative*, was a fact clearly capable of *positive* proof on the part of the prosecution; but that has not been proved; it *could not* be proved, because it was *not the fact*!

I must also warn you with the same solemnity, that I am not, nor ever was, a member of any political society in this country. If I had been, that also was a proveable fact, but has not been proved on the part of the prosecution, although the contrary is incapable of proof on mine.

Gentlemen, with these few observations arising not only from the facts, *but also from the evidence*, I consign myself

with confidence to your justice, not doubting that by your verdict you will acquit yourselves as men and Englishmen, to your own consciences, your country, and your God!

No. VII.

To Mr. ———.

SIR,

Hart-Street, Bloomsbury-Square, June 10, 1798.

MR. COIGLY's friends have an undoubted right to every satisfaction I can give them, relative to any steps I may have thought it expedient to take on his behalf; and most anxiously do I hope that I have not been wanting in any exertion my duty demanded of me. That HE thought I had not, will be to me, and doubtless to his friends, a consolation to the last hour of our lives. Readily, therefore, do I comply with your request in transmitting you, for their information, a narrative of my correspondence with the secretary, and other officers of state, subsequent to the trial, with the letters I received from Mr. Coigly himself respecting it.

I am, Sir,

Your most obedient servant,

JOHN FOULKES.

Mr. FOULKES's Narrative.

HAVING, what appeared to me to be, indisputable authority for believing that there was a material variance between the evidence given by two of the witnesses against the prisoner *at the trial*, and that which those witnesses had given upon

upon their *previous* examination at *Bow-street*, relative to one most important fact; and for believing that the same witnesses had given the same account of the same circumstance *in conversation*, as they had sworn to before the magistrate at *Bow-street*; conceiving it also extremely probable, for reasons of almost equal weight, that their evidence *before the privy council* must have been to the same effect; I thought it my duty to write the following letter:

*To his Grace the DUKE OF PORTLAND, one of his Majesty's
Principal Secretaries of State.*

MY LORD DUKE,

Hart-Street, Bloomsbury-Square, June 1, 1798.

BEING informed that the evidence given by John Revett and Edward Fugion, upon the trial of Mr. James Coigly, differs materially from that which they gave on their examination at *Bow-street*, before Richard Ford, esquire, the sitting magistrate there, it appears to me to be my duty, as Mr. Coigly's solicitor, to address myself to your Grace's justice, and request an inspection and copy of that examination, for such legal purposes as may be deemed expedient, before the sentence of death is executed.

If I am guilty of any informality or liberty in doing this, I beg leave to assure your Grace that I am not intentionally so; and I trust the occasion and its urgency will be deemed an apology for it.

I have written also to this effect to the attorney-general and Mr. Ford, and have the honour to be,

With great respect,

My Lord,

Your Grace's

Most obedient, humble servant,

JOHN FOULKES.

I took

I took this letter myself, on the day of its date, to his grace's house, and was desired to attend at his office the next morning at 12 o'clock. On the same day I forwarded similar letters to the attorney-general and Mr. Ford. The attorney-general immediately sent a message back, desiring to see me at his chambers, at half past 9 o'clock on that evening, but not returning home until after eleven at night, I was too late to attend him;—and the next morning he dispensed with my attendance *on him*, in consequence of a note I sent to inform him of *his grace's* appointment.

Mr. Ford also paid immediate attention to my letter, and sent me a written answer, purporting, "That the examinations taken before him at Bow-street, were not in his possession; and that he had delivered them up to the secretary of state, and had not seen them since that period."

At 12 o'clock the next day (the 2d of June) I attended, according to his grace's appointment, at his office at the treasury, and saw Mr. Wickham. *The examinations were not shewn to me*, but Mr. Wickham informed me, that his grace's commands were, "that I should state to him in writing what the variance was, of which I had been informed, between the evidence given at the trial, and upon the examination at Bow-street;" adding—"of course I have to assure you, in the mean time, that the warrant of execution is not gone down!"—I therefore wrote the following letter:

To WILLIAM WICKHAM, Esq. one of his Majesty's Under-Secretaries of State.

SIR,

Hart-Street, Bloomsbury-Square, June 2, 1798.

In compliance with your request, I will state, as well as I am able to do, without an inspection of the examination, the variance which appears, as well to the prisoner's counsel as to myself, to be material, between that examination and the evidence given by Revett and Fugion *on the trial of Coigly*.

So far as regards myself, personally and privately, I should be content with your assurance that the variance does or does not exist; but (its existence having become a subject of general circulation and belief) I think that in justice as well to the prosecutors, as to the prisoner and myself, I am professionally bound to repeat and urge my request to be permitted an inspection, and to be furnished with an authenticated copy of the original minutes of the examination.

The evidence given by the above witnesses upon the trial, as taken down by the counsel in the cause, was to this effect:

“ That Revett found a great-coat in the room in which Coigly and O'Connor *had been*; that he took it down stairs into the parlour, where all the prisoners were in custody; that he there took out of the pocket of that coat a pocket-book and some other things, tied them up in a handkerchief, and put them into his side-pocket; that both the witnesses then took the prisoners and the luggage to Benson's hotel, where they (the witnesses) and Twopenny went into a room, and pulled out the [traitorous] paper from the pocket-book; that it was in the middle of the pocket-book, and not in the pocket of it; and that they also found in the same pocket-book letters and papers, which they marked No. 1, 2, 5, 6, 7, and 8.

This is the substance of the evidence of these witnesses upon the trial, as far as it regards *the finding* of the paper in question; concerning which, I am credibly informed, they gave a *different account* upon their examination at Bow-street, and probably before the privy council!

In summing up the evidence to the jury, the learned judge laid the most *decisive* stress on “ the circumstance of the paper in question being found in a pocket-book, together with other papers belonging to the prisoner, and some letters which, though coming from different persons, were all addressed to him ! ” — These were the judge's words.

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Under these circumstances, *independent of the question of perjury*, it can hardly be doubted that the variance I have alluded to must have been material in itself, and most injurious, indeed *fatal* to the prisoner!

It is scarcely necessary for me to add to this, the obvious fact that appears in evidence, of the coat in question having been, when found by Revett, for some time *out of the prisoner's possession*.

I have the honour to be,

With great respect,

Sir,

Your most obedient, humble servant,

J. FOULKES.

You will doubtless perceive that in the above letter I avoided to state the contents of the examination, fearing that a misstatement might prove fatal; thinking it hardly possible, *without seeing the examination*, to state its contents with any degree of accuracy; and persuading myself that, as the examination was in the possession of the secretary of state, the attempt was unnecessary!

The flattering attention that had been paid to my application; the nature and apparent authenticity of the communication I acted upon; the unreserved conduct of the prisoner in stating his case to me; and his solemn declarations respecting the fact the witnesses had sworn to, having flushed me with sanguine hopes of success, I thought it right to communicate a small portion of those hopes *to him*, which I endeavoured to do, by letter, on the 2d of June.

On the 4th of June I received the following answer:

MY DEAR FRIEND,

Maidstone Gaol, June 3, 1798.

It is in vain to make any attempt in my favour. I intend to write to the Duke of Portland, to have my execution expedited.

expedited. The sooner the better. May God protect you from the machinations of all wicked and designing men!

JAMES COIGLY.

On the same day, the 4th of June, I received also a letter from Mr. Wickham in consequence of my last, informing me,

“ That he had laid my letter of the 2d instant, before the Duke of Portland, relative to the examination of Revett and Fugion at *Bow-street*. And that he was directed by his grace to desire, that I would state to him *the precise points* in which I was informed that the evidence given by those witnesses at Maidstone, differed from that which they had respectively given before the Magistrate at *Bow-street*.”

In consequence of which, I wrote on the same day as follows :

To WILLIAM WICKHAM, *Esq. one of his Majesty's Under-Secretaries of State.*

Hart-Street, Bloomsbury-Square, June 4, 1798.

In compliance with the desire contained in the letter I have this day had the honour of receiving from you, relative to the evidence given by Revett and Fugion on the trial of Coigly, and that which the same witnesses gave on their examination before Mr. Ford at Bow-street, I will confine myself to that point of difference which appears to me to be the most material; namely, that which regards *the finding* of the address or paper, which is the very foundation of the charge of high-treason against the prisoner; without which, and indeed with it, if it be, as I trust I shall be able to shew it is, imperfect, I humbly and respectfully submit, the charge itself must fall to ground.

Having in my last letter stated the evidence of the witnesses from the notes of the prisoner's counsel, I will only recapitulate it here in the words, and with the very im-

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pressive comments of the learned judge, which were these:—“That it was sworn not only by one witness, but by *three*—[N. B. It appears from short-hand notes taken at the trial, that the learned judge said *four*.—If so, it was doubtless said erroneously, for there were only three witnesses to this fact, namely, Revett, Fugion, and Twopenny; which *two* latter also *were not present when the coat was found!*] that this address which they say the prisoner was to carry to France, was taken out of his *pocket-book*; there were found, in *that pocket-book*, letters written by different persons, but all addressed to him.—How came these letters to be all addressed to him if they were not his?—And *four* [this again should be *three*] witnesses have sworn that this address from the Secret Committee of England was found in *that pocket-book*. You see, gentlemen, this is extremely strong—what have you to contradict it?—Nothing!”

The *whole* weight of the learned judge's comments appears therefore to be rested on the papers being found “*in a POCKET-BOOK, with letters addressed to the prisoner;*” and his question upon it is very strong and emphatic—What have you to contradict it? What answer THE JURY, to whom it is put, would have given to this question, if Revett and Fugion, the only witnesses who could or did swear to this supposed fact, had either *admitted* before them on cross-examination, that they had sworn *differently* at Bow-street; or *denied* that they had so done, and Mr. Ford (before whom the examination was taken) had proved, as he must, and unquestionably would have done, supposing it to be (as we are informed it is) the fact, that *they had* sworn differently before him;—*What answer*, I say, the jury would have given to that emphatic question of the learned judge, or in other words, *what verdict* they would have delivered, under such circumstances of palpable prevarication, or detected perjury, in a case thus tainted by the one, or blasted by the

the other, I confess myself unable to form a doubt upon, *let the variance in question be what it may!*

In the present case, I humbly submit, it adds to the weight of my conclusion, that the variance is not in itself immaterial. I cannot profess, without seeing the examination, to give the precise words of it. But I understand it to be in substance, "that the address or paper in question was found, not in a pocket-book in a pocket of the great-coat, but loose *in one of the pockets of the coat.*" And here I am authorized by Mr. Plumer, the prisoner's leading counsel, to add, that he particularly and pointedly put the question to Revett, which Revett particularly and *positively* answered, "that he found the paper NOT IN THE POCKET of the coat, *but in the middle of the pocket-book in which the letters were.*"

In giving this evidence, thus altered and improved, the witnesses must doubtless have perceived, and it is manifest, that the probability of the paper's belonging to the prisoner would be increased, not alone by the company in which that paper is said to have been found, but in the same proportion as the opportunity or means of palming it upon him, or of its having gotten into his possession by undue means, could be diminished; and moreover that the importance of the paper rose in proportion to the security and care, of its custody:—else *wherefore* swear they found it *in a pocket-book*, if they had in fact found it *loose in a great-coat pocket?*

Independent therefore of the obvious arguments that would have arisen in the prisoner's favour, if the paper had been proved on the trial, as on the examination, to have been found loose in the pocket of a great-coat, which was at the time of finding it out of the prisoner's possession, on the back of a chair, at a public inn, I cannot help thinking, and it is my duty to repeat and urge that, if on his trial he had had the benefit of our subsequent information of the existence of *any* variance between the testimony the witnesses

in question gave on his trial, and their account of the same fact on their examination at Bow-street, one of the two consequences already hinted at *must* have resulted; namely, that they must either have admitted or denied that variance. If they had *admitted it*, the prisoner would have been entitled to, and most unquestionably would have had, the benefit, as well of *this prevarication*, as of all the arguments naturally springing from the paper's having been found loose in the pocket, &c. &c. and from Stephen Perkins's evidence. If on the other hand, they had *denied it*, the cross-examination of Mr. Ford, an honourable man, and the magistrate before whom the examination was taken, would have given the prisoner the still greater benefit, if possible, of *his* contradicting and overturning their evidence; and thus would the foundation of the charge have been rendered imperfect or totally destroyed. Either way, therefore, whether the witnesses admitted or denied the variance, I most humbly submit, it is *at least probable* that the prisoner **WOULD HAVE BEEN ACQUITTED!**

I am too deeply impressed by a sense of the attention, that has hitherto been paid to my humble efforts in the prisoner's favour, to think it necessary to claim your most serious consideration of the facts and arguments I have presumed to urge in this letter, or to doubt your pardoning that presumption on so awful an occasion; and that occasion, I hope and trust, will excuse also my again repeating my urgent hope to be favoured with an inspection and authentic copy of the examination.

I have the honour to remain,

With the greatest respect,

Sir,

Your most obedient, humble servant,

JOHN FOULKES.

I took the above letter to Mr. Wickham's office in the morning of the 5th of June; and in the evening of that day

day, received a note from him, saying, that " he would be glad to see me there the next day at 12 o'clock."

I attended there accordingly at that hour, and saw him; but, being sent for by Mr. Dundas, he appointed me to come again at 2 o'clock on that day, which I did: soon afterwards, while I was waiting in the anti-room, where I continued till near 4 o'clock, came Mr. White, the solicitor of the treasury, and then the attorney and solicitor-general, who all went into Mr. Wickham's office; and presently after this came Mr. Ford, who called me into the passage leading to Mr. Wickham's office, and told me, " that the examination of the witnesses taken before him at *Bow-street*, had proceeded no farther than he thought it necessary to warrant his committing the prisoners; but that he had certainly *asked* the witnesses afterwards, as to the finding of the paper in question, and they had informed him, that they found it *in the prisoner's pocket*; but whether they meant *loose* in the pocket or not, he could not pretend to say, for he had not asked them, nor had they informed him, farther than he had already stated to me.—Adding, " the idea you go upon, I see, is that it was found *loose* in the pocket."

About 4 o'clock, the attorney and solicitor-general, and I believe Mr. Ford departed; and Mr. White was departing as I was called in by Mr. Wickham, who said, that " as I had been kept waiting so long, he would not detain me while he *wrote* the answer he was directed to give me, which (he added) would be unfavourable." He then asked me, *whether I had any thing farther to urge on the prisoner's behalf?* to which I answered, that " whether the variance I had been informed of between the examination, and the evidence given at the trial, existed or not, the witnesses who had given that evidence had certainly said *in conversation*, that they had found the paper in question, not in the pocket-book, but loose in the pocket; and that the same arguments precisely would have arisen from *that* variance,

riance, as from a regular examination on oath."—Adding, "that I stated this to him for the purpose of being informed whether he thought it of sufficient importance to be reduced into writing, to lay before the Duke of Portland, as I wished by no means to be troublesome." His reply was, "with regard to the reducing it into writing, you must exercise your own discretion; BUT CERTAINLY, ON AN OCCASION LIKE THIS, WE SHALL THINK NOTHING TROUBLESOME."

It may be proper to add here, that *the examinations were not produced to me!*

About 7 o'clock in the evening, I received the written answer Mr. Wickham had promised me, the purport of which was:

"That every attention had been paid by his Grace the Duke of Portland, to the communications contained in my letters, relative to the supposed variance between the evidence given at the trial, and on the examination at *Bow-street*, but that his grace saw no ground for his farther interference."

Conceiving therefore, that it was still left open to me to urge the further grounds for that interference, which I had suggested to Mr. Wickham, as before stated; I had very late at night sketched a further letter to him, when I was *accidentally* informed, that the warrant for the prisoner's execution, at 11 o'clock the next morning, had been sent down. It was announced to the prisoner, as his letter (which I received by the post the next morning) informs me, at 5 o'clock in the afternoon of the preceding day, viz. the 6th of June. Consequently (Maidstone being thirty-five miles off) it *probably* was sent down at, or soon after twelve o'clock, when I waited upon Mr. Wickham according to his first appointment, and when he was sent for by Mr. Dundas;—*doubtless* before 2 o'clock, when the attorney and solicitor-general, Mr. Ford, and Mr. White arrived, and I attended Mr. Wickham's second appointment!—*certainly* before

fore 4 o'clock, when *they* left him and I was called in as already stated!

It was with difficulty that I could bring myself to believe the information to be true. But I thought it of too important a nature not to be attended to. I therefore prevailed on two friends to set out for Maidstone, at 2 o'clock the next morning (according to an assurance I had personally given the prisoner, at his earnest request, on the day after his conviction, and by letter afterwards) to be present at his execution, *if it took place*, for the purpose of bearing testimony to his conduct on that awful occasion, and to prevent that misrepresentation, the fear of which appeared to give him considerable anxiety.

On that morning the dreadful information I had received, was unhappily confirmed by the beforementioned letter from the prisoner, which I inclose.

[This letter the Editor thinks it proper to insert.]

To Mr. FOULKES, *Hart-Street, Bloomsbury-Square,*
London.

MY DEAR FOULKES,

Maidstone Gaol, Wednesday Evening, 5 o'clock, June 6, 1798.

I HAVE just received notice that my execution will take place to-morrow morning at 11 o'clock.—Receive my last lines—receive my last thanks. Had it been my lot to have lived longer, I should have had the pleasure of cultivating the acquaintance of a man, who has so generously come forward in the cause of suffering humanity, and has discharged his duty in a manner so honourable to himself, and so characteristic of the former inhabitants of this country. But, alas! they are no longer what they were. Slaves to gain—vice and corruption are predominant! May Almighty God bless and protect you from the envenomed malice of all your enemies. May you
ever

ever be as well as I wish you, is the last prayer and blessing of

Your injured and unfortunate friend,
JAMES COIGLY.

[Narrative continued.]

THE further letter I had sketched and intended to have sent to Mr. Wickham, had the time I expected been allowed me, was as follows:

SIR,

Hart-Street, June 6, 1793.

I AVAIL myself of the liberty you allowed me, when I had the honour of an interview with you this afternoon, to state the further facts and arguments I have to urge on behalf of Mr. Coigly.

In my last letter I alluded to the evidence of Stephen Perkins, which I said I conceived would have become extremely material (as in fact it appeared to me to be without) if we had been apprized at the trial of the supposed variance between the evidence given there, and that which had been given either at Bow-street, or *before the privy-council*.

Perkins's evidence amounted, in my mind, almost to a *negative* of the charge; *particularly* if prevarication, or perjury had been brought home to the two witnesses alluded to in the former part of my correspondence; for Perkins swore, "that he *had warned Coigly himself at Whitstable*, that an information had been laid against him and his friends as suspected persons; that they *would certainly be searched* (as they afterwards were!) *at Whitstable*;" and a similar warning was repeated by his telling him, after that search had taken place, "that they would be *overhauled again at Margate*."

After this may I not ask, is it rational, is it probable, is it common sense to believe, that the very serious paper, for the
supposed

supposed *treasonable* possession of which he is doomed to forfeit his life was at that time in the prisoner's custody? or at least, that he had any *knowledge* of any possession of *such* a paper, and did not, under such circumstances, *immediately destroy it*? If it were so important as to be the very object of his supposed mission, could he have forgotten that he had it? The treasonable intent, and the knowledge of the possession of the paper are certainly inseparable. It is utterly impossible for any man, much less a man of the extraordinary memory and other great mental endowments of the prisoner, to be the legitimate bearer of a treasonable paper to France, and not to know he was so *when reminded of it*. The mere *unconscious* possession of the paper would *certainly* not have been criminal; and many cases might be stated in which even the *conscious* possession of even such a paper would not; with these, however, although they may not be entirely conjectural, yet as they do not perhaps clearly, palpably, and naturally flow from *the evidence given in the cause*, I forbear to trouble you. Under such circumstances, I think, I may admit with safety that the prisoner intended to go to France, was possessed of the paper, and that the paper was treasonable; nay, I *will* admit, that *at the trial* (although the great-coat, and the possession of the paper were *certainly not clearly proved* upon him) that all this was proved, and that the very important evidence of Revett and Fugion, in proof of that possession, was *then* unshaken; still, if the prisoner *was ignorant of the possession of the paper*, he was *not guilty* of the crime of treason, or perhaps any other! The great question therefore, *in this view of the case*, appears to me to be this: "Whether he was or was not ignorant of his possession of the paper?"

With respect to the *affirmative* of his knowledge of the possession of the paper, or in other words, *the treasonable intent*, how stands the *evidence*? I do admit that its having been proved (by Revett and Fugion only I believe;—certainly only by them and Twopenny) that he denied the

great-coat to be his, is a *circumstance* from which it may be *inferred*, that it was *probable* that he knew that this paper was in the pocket of it. This however is not, *even in this unqualified state*, that plain, *unstrained, direct, manifest*, and convincing evidence, which is required by the statute of King Edward. The crime, to adopt the very significant epithet used in the statute to define the sort of evidence required in cases of high-treason, is not made out "*proveably*." It is barely made out *probably*. But this is not all, for that *probability* was considerably weakened at the trial, if not entirely destroyed by the evidence of the very witnesses whose testimony gave it birth; for one of them swore that *all* the prisoners had refused to acknowledge the luggage, and that one of them, *in the presence of the rest*, had said he refused to own part of it, *because it was probable that he* (the witness) *had put something into it*. And Revett admitted, though reluctantly, "that he had been desired by Coigly to make a schedule of, mark, and seal his papers, and to send for a magistrate for that purpose, which had not been done." Were not these very sufficient, and *very probable*, reasons for his refusing to own the great-coat? Surely this *probability* is *at least* as strong as the other, more naturally flows from the evidence; and, were it even a case of doubtful balance, is more agreeable to justice, because more congenial with humanity and mercy!

But I admit also that its having been proved, by the production of a passport, "*that the prisoner had been in France*," was another *circumstance*, from which it might perhaps plausibly, but doubtless not *necessarily and inevitably be inferred*, first, that he had been the bearer thither of the former address alluded to in this paper; and *then*, that being so, he *must have been* the person intended to be the bearer of this. But weak as this evidence is, and slight and very questionable as was the testimony by means of which the passport was to be brought home to the prisoner,

soner, these are not the only answers to it. The evidence of the passport contains within itself the means of its own destruction. It furnishes upon the very face of it, a strong probability that the prisoner was *not* the bearer of a *former* address from England, and therefore not the intended bearer of this; for it appears from it, that he travelled in France, not as an *English emissary*, but in the *disguise* of an American. Why? His real character, if such an emissary, certainly needed no such disguise in *France*! To which may be added another strong negative probability, arising from the date and contents of the paper itself. It is dated 6 Pluaise (i. e. the 25th of *January*!) and written, it says, "on the wing of the moment, *because its intended bearer, the person who had conveyed the former address, had but A FEW HOURS to stay for it!*" And yet it was in evidence in the cause, that the prisoner did not set out until the latter end of the following MONTH, the 26th of February!—Is it not therefore a fair, is not a convincing inference that he was *not* the intended bearer of *this* paper. These are surely strong and natural probabilities for the prisoner, in opposition to weak and strained probabilities against him!

Again, however, it may be contended that the clandestine manner in which the prisoner was detected in the act of quitting the kingdom, is a third, and certainly it is the *only* remaining, circumstance worth noticing, from which to *infer* the *probability* of the treasonable intent. But this again is but probability, however strong, and the fact upon which it is founded, or rather from which it is *inferred*, was rationally accounted for on two strong grounds, totally distinct from the crime of treason, namely, its necessity, first, from the prisoner's being a fugitive from his native land for fear of arrest, under some other charge; and secondly, from its being a *misdemeanor*, punishable by fine and imprisonment, to quit the kingdom without his majesty's licence. Thus are *all* the *probabilities* deduced from the

evidence in support of the affirmative of the prisoner's guilt, or treasonable knowledge of the possession of the paper opposed, and I think destroyed by probabilities of equal or greater strength and number in every instance; and stretching the evidence of the prisoner's guilt to its utmost possible bearing, it amounts to no more than a ground for an inference of a probability of it; from which alone it might perhaps fairly be insisted, that the crime is not *proveably* made out as the statute requires; is not even *probably* made out, which according to the legal exposition of the statute would be insufficient; and that therefore, upon this statement alone, the prisoner was entitled to an acquittal.

But this is not all. It yet remains to be enquired how far *the evidence* goes towards the *negative* of the prisoner's treasonable intent, or knowledge of the possession of the paper? Undoubtedly that negative is almost, if not wholly, within the grasp of Perkins's evidence. It is hardly *possible* to believe that the prisoner WAS CONSCIOUS of the possession of the paper when Perkins warned him of his danger. And yet it is said to have been found in his pocket; and, to make out the case against him, *must be believed to be there with his privy the next morning at the very place where he expected to be "overhauled!"* Surely this could never be; such a conclusion is not proveable, is not probable, is hardly possible! I think therefore, that looking not to the prisoner's guilt but to his innocence, I may justly say, in the language of the learned judge who presided at the trial (and I hope without impertinence or presumption, because some of the topics I have urged were not discussed at the trial) this is *extremely strong*; and ask, in the same very appropriate and emphatic language, What have you to contradict it? To which I would answer in the same language (considering the arguments I have stated respecting the contrary probability as well founded, and palpably deducible from the evidence) certainly NOTHING!—And in answering thus, I speak with reference, as I have already suggested, to *all* the evidence given in the cause against the prisoner.

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How much stronger then is the prisoner's claim to the *mercy*, I would say the *justice* of his country, when I add to all this, the alledged and proveable variance I had the honour of stating to you this day, between the evidence of Revett and Fugion at the trial, and the account they had given of the same fact *in conversation* at least, if neither at Bow-street nor before the privy-council. For most unquestionably the same arguments would have arisen in the prisoner's favour from a variance in conversation, as from that which might appear from the production of a regular examination. The witnesses must, upon the trial, either have admitted or denied that they had had any such conversation. If they *admitted* it, their prevarication would have been detected, and with the same effect in the one case as in the other. If they *denied* it, the person with whom those conversations were had, might have been called to contradict them, and the result must have been the same,

I am, &c. &c.

This was my intended letter. Whether it contained any reasonable ground for a hope of success or not, I lament that the opportunity was not given me to make the experiment. Perhaps I ought to have written and sent it immediately, and my delay may be less excusable than their dispatch; but the subject was too important to be hurried over in a moment; and the assurances I had received from Mr. Wickham at my first and last interviews with him, added to the general public belief that the execution of the sentence had been suspended for ten days, left me, as I conceived, ample time. And in fact I *was* half prepared as soon after the last interview as, I think, was possible; for I did not receive the written answer Mr. Wickham had promised me until seven in the evening, and I had written the draft of my letter on that night, and would have sent it the next day, had not the prisoner's letter by that morning's post, as
already

already mentioned, brought me the fatal news of his intended execution on that morning.

One prominent result of these transactions in my mind is, that I cannot help considering it as a lamentable defect in the administration of justice, that the examinations or depositions, upon which the charge is founded, are not returned into court, as well in cases of high-treason as in those of felony. And I think, I am warranted in this conclusion, by the opinion, to that effect, given by the learned judge in his charge to the grand jury upon this very trial. Besides enabling the judge to give the grand jury, as he observed, the outline of the case submitted to their consideration, would it not promote the ends of justice to supply the court with the means, and the examinations are the means, and perhaps the only *effectual* means, of detecting a prevarication, or proving a perjury? Without these means the court may be imposed upon, witnesses may upon the trial swear *with impunity* as differently from their previous examination as they think fit; and upon *such* evidence, innocent men be doomed to death!

J. F.

No. VIII.

Copy of a Letter from JAMES COIGLY, to the
ATTORNEY-GENERAL.

SIR,

Maidstone Gaol, June 5th, 1798.

WERE I not certain of immediate execution, I would not take the liberty of sending you these my last lines, by way of memento of a person legally murdered.—I will readily admit that you were not originally a party to the conspiracy to murder me; but I will ask you, sir, in the face of your country, is it possible you could hold your situation, and proceed in it as you did, without the knowledge of at least a part of the perjury committed against me? According to your own technical phraseology, I will give you a

case

case in point: you were present in the privy-council chamber when Mr. Ford read over my examination: I was asked by Grenville and Pitt, was it correctly taken down? I answered, it was not; that many of my answers were not mentioned at all, and where they were, the answers were not in my words, but changed to a different meaning.—Now, sir, you were also present in the court at Maidstone, when Mr. Ford swore to the contrary; that is, he swore that I made no objection whatever to sign the examination on the score of authenticity or correctness; and he also swore, that he took down every thing material in my answers. Whereas, sir, you knew the contrary, and I call upon you to testify the truth hereafter, though you were silent when Mr. Ford perjured himself to your knowledge. Yes, you knew I was repeatedly pressed by Mr. Pitt to answer, was I, or was I not, a member of the Corresponding Society? was I or not, connected with it, the Whig Club, or some other of the political societies in this country? did I or not attend meetings of such societies at Furnival's-inn cellar, or elsewhere? to all of which questions I answered directly, that I never was a member of any political society in Great Britain; that I never attended any of their meetings at Furnival's-inn cellar, or elsewhere, either public or private. Now, sir, I repeat the question, and urge it home to you—were you not present, and silent in the court, when Mr. Ford perjured himself on that point? did you not declare in court, repeatedly, that from your situation as public accuser, you were bound to protect me as a subject, from any injustice whatever? Did you fulfil your promise?—I have known many attorney-generals rather inclined to the *punica fides*; two of them were remarkable—M. Joli de Fleury, attorney-general to Louis XVI, and Fouquier Tinville, attorney-general to Robespierre. Do you not know, sir, that Mr. Ford, after having first examined Revett, Fugion, and Twopenny, at Bow-street, called me up, and told me, that the only charge against me was, attempting to leave this kingdom,

kingdom, and go into parts beyond the sea, without a regular licence for so doing?—these are his words, literally; Mr. Ford even said it was bailable. Now, sir, if Revett, Fugion, and Twopenny, had given the same evidence then which they gave afterwards in court, is it in the nature of the man, that Mr. Ford could have held such language to me? can he be supposed so ignorant of his duty? Neither did Mr. Ford once mention any treasonable paper whatever, at that examination. Revett, when confronted with me, at Bow-street, was obliged to acknowledge, in the presence of Mr. Ford, that neither he nor his companions had ever asked my name; yet he swore in court, that we all refused to tell our names; neither did Mr. Ford take any notice of the abovementioned circumstance, in his account. Oh shame, shame on perjury! Why were we not examined the following day, the 2d of March? Why did Revett, the following evening, when giving me up to a king's messenger, say, "Now you are under a different charge: you are now a state-prisoner?" When arrested at Margate, I made no resistance, though I could have done it effectually. I called for a magistrate, and insisted positively to have one brought, and all my papers examined in my presence, before I would consent to be taken out of the room; upon which, Revett and Fugion produced handcuffs, and threatened to put them on me, if I continued to insist on that point.

I could point out many striking instances of perjury in all the principal witnesses against me; but as I am convinced that they could not escape your penetration, I shall proceed to other matters, and ask you, why you did not produce the gaoler of Dundalk, as a witness, according to the notice served on me? You were very anxious, *in words*, for my justification, and the aforesaid gaoler would have been a most material witness for me, so he was not produced, and I was deceived.—Pray why did you not assist the learned judge, as to the gross mistakes he made relative to my case, when summing up the evidence? It could not escape
your

your notice, that he changed two years into ten years—nor, his memorable remark on a good moral character.

Now, with my last breath, I do solemnly declare, that I never was the bearer of any letter, address, paper, writing, or message, from any man, or body of men, in this or any other kingdom, to the Executive Directory of France, or to any one for them; never was a member of the Corresponding or any other political society in Great Britain; never attended any of their meetings, either public or private; and am innocent of the charge for which I die: so help me, God! These my dying words, shall resound in your ears as long as you shall live; but particularly in your last moments, the melancholy reflection must haunt you incessantly, that you were a leading instrument in procuring my death. Through the love of God, I forgive you, and all my enemies, particularly those concerned in my murder; earnestly conjuring you, by the living God, to be more careful in future, how you embrue your hands in the blood of your fellow-subjects.

I am, sir,

Your much-injured,

Though forgiving,

Humble servant,

JAMES COIGLY.

Why did you not bring forward the Manchester and other witnesses, of whom you boasted? Perhaps, Mr. White had got an intimation that they would be completely defeated; so it was judged better to trust to the steady workmen, who would swear through all, at any rate, and against whom, from the nature of the case, evidence could not be brought. After all, had I been acquitted, as I ought to have been, Messrs. Revett and Fugion would have taken care of me, with another warrant.

Addressed—To his Majesty's Attorney-General.

*Copy of a Letter from JAMES COIGLY to the
DUKE OF PORTLAND.*

MAY IT PLEASE YOUR GRACE,

Maidstone Gaol, June 6th, 1793.

I HAD just taken the pen, to entreat a speedy execution of the sentence against me, when the arrival of the warrant was announced; therefore I change the subject of my letter, to thank your lordship, for having ordered a *coup de grace* to my unfortunate existence. It cannot be supposed that a most noble personage could have any knowledge, directly or indirectly, of the subornation of perjury carried on against me; yet it is not the less true, that such schemes were put in practice, to obtain a verdict of GUILTY; and Mr. White could give ample information on that subject, if his honesty could once get the better of his other good qualities. It may not appear to your lordship an affair of moment, whether I am innocent or guilty in fact, as the decisive sentence is now past; but to my character it is due, and to the public at large it is of the utmost consequence, to know the true state of the case; this will appear hereafter, when I have not a doubt but my innocence will be made as public as my untimely fate. Here your grace will please to permit me to make my last solemn protestation upon earth, previous to my appearance at the judgment-seat of Almighty God. Standing on the brink to be launched in a few minutes hence into eternity, I do solemnly declare, that I never was the bearer of any letter, address, or message, from any man, or body of men, in this or any other country, to the Executive Directory of France, or to any person for them, or from them: I do farther declare, under the same impressions, that I never was a member of the Corresponding Society, nor of any other political society in Great Britain; never did attend any of their meetings, either public or private; neither am I guilty of the charge for which I die: so help me, God!

The

The only request I have to make, is, that your lordship will permit this letter to stand on record, as my last declaration against all those who were concerned in my murder. Conscious innocence has hitherto supported me through heavy afflictions and deep distresses; and I trust it will, with the assistance of God, cause me to triumph, even in the torments of a violent death, over the implacable malice of my enemies, whom I forgive from my heart, for the sake of religion. Though the tools of party kill my body, they affect not my mind: there exists not a power capable of making me shrink from the duty I owe my God and my country.

JAMES COIGLY.

Addressed—To his Grace the Duke of Portland.

FINIS.



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